109-432

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 86.

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WILLIAM BAILEY IN HIS OWN RIGHT, SARAH LEETHAM, EXECUTRIX, AND HENRY COOPER GLEADOW, EXECUTOR OF THE LAST WILL AND TESTAMENT OF WILLIAM LEETHAM, DECEASED, AND WILLIAM BAILEY AS ASSIGNEE, AND THE SAID SARAH LEETHAM AND HENRY COOPER GLEADOW, AS SUCH EXECUTRIX AND EXECUTOR OF THE SAID WILLIAM LEATHAM, ASSIGNEE OF THE SAID WILLIAM LEETHAM AND OF JAMES LEETHAM, EXECUTORS, AND ELIZABETH LEETHAM EXECUTRIX, OF THE LAST WILL AND TESTAMENT OF JOHN LEETHAM, DECEASED, APPELLANTS,

vs.

THE UNITED STATES.

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APPEAL FROM THE COURT OF CLAIMS.

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**FILED OCTOBER 11, 1880.**

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1883.

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## No. 86.

WILLIAM BAILEY IN HIS OWN RIGHT, SARAH LEETHAM, EXECUTRIX, AND HENRY COOPER GLEADOW, EXECUTOR OF THE LAST WILL AND TESTAMENT OF WILLIAM LEETHAM, DECEASED, AND WILLIAM BAILEY AS ASSIGNEE, AND THE SAID SARAH LEETHAM AND HENRY COOPER GLEADOW, AS SUCH EXECUTRIX AND EXECUTOR OF THE SAID WILLIAM LEETHAM, ASSIGNEE OF THE SAID WILLIAM LEETHAM AND OF JAMES LEETHAM, EXECUTORS, AND ELIZABETH LEETHAM EXECUTRIX, OF THE LAST WILL AND TESTAMENT OF JOHN LEETHAM, DECEASED, APPELLANTS,

VS.

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APPEAL FROM THE COURT OF CLAIMS.

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1 Court of Claims of the United States.

I. *Petition.—Filed May* 13, 1876.—*J. R.*

WILLIAM BAILEY, IN HIS OWN RIGHT, SARAH Leetham, executrix, and Henry Cooper Gleadow, executor of the last will and testament of William Leetham, deceased, and William Bailey as assignee, and the said Sarah Leetham and Henry Cooper Gleadow as such executrix and executor of the said William Leetham, assignee of the said William Leetham and of James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of John Leetham, deceased,

*vs.*

THE UNITED STATES OF AMERICA. } No. 11390.

To the honorable the judges of the Court of Claims:

Your petitioners, William Bailey in his own right, and Sarah Leetham and Henry Cooper Gleadow as executrix and executor of the last will and testament of William Leetham, deceased, and the said William Bailey as assignee, and the said Sarah Leetham and Henry Cooper Gleadow, executrix and executor of the last will and testament of the said William Leetham, deceased, also assignee of the said William Leetham and James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of John Leetham, deceased, and subjects of Her Britannic Majesty, and residing and domiciled in or near Hull, England, respectfully represent:

2 I. That by an act of Congress of the United States of America, entitled "An act to carry into effect the decree of the district court of the United States for the southern district of New York in the case of the British steamer Labuan," approved July 7th, 1870 (Statutes at Large, volume 16, page 649), it was enacted that there be paid, out of any money in the Treasury not otherwise appropriated, to William Bailey, William Leetham, and John Leetham, of England, and their legal representatives, owners of the British ship Labuan, $131,221.34, with interest from June 2d, 1862, to the time of payment, and $5,000 without interest, said sum being declared to be due under a decree of the district court of the United States for the southern district of New York, pronounced March 25th, 1868, on account of the illegal capture of the British steamer Labuan and her cargo by a cruiser of the United States.

II. That your petitioners, William Bailey and the said William Leetham and the said John Leetham, were at the time of the illegal seizure of said steamship Labuan, for which indemnity was provided by said act of Congress, the sole owners of said steamship, the said William Bailey being the owner of thirty-two sixty-fourth parts thereof, and the said William Leetham being the owner of twenty four sixty-fourth parts thereof, and the said John Leetham being the owner of eight sixty-fourth parts thereof.

III. That before the passage of said act of Congress, that is to say, on the 22d day of March, 1862, the said John Leetham died, and the said William Leetham and James Leetham and Elizabeth Leetham became the executors and executrix of the last will and testament of the said John Leetham, deceased, and duly qualified as such.

IV. That on the 12th day of July, 1870, under and by virtue of said act of Congress, there became and was due to the said William
3 Baily and the said William Leetham, and the said John Leetham, and their legal representatives, the sum of $200,070.34, including interest to the said last-mentioned date, and on or about said 12th day of July, 1870, an account was stated at the Treasury of the United States between the said William Bailey and the said William Leetham, and the said John Leetham and the United States of America, whereby it was found and declared that the said United States was indebted to the said William Bailey and the said William Leetham and the said John Leetham, or their legal representatives, in the said sum of $200,070.34, for which said amount a requisition was duly issued, and on said 12th day of July, 1870, a draft, No. 3713, on Treasury warrant No. 848, was drawn on the Treasury of the United States by the assistant treasurer of the United States at Washington, payable to the said William Bailey, William Leetham, and John Leetham, of England, owners, and their legal representatives, for said sum of $200,070.34..

V. That by the 1st section of the act of Congress of the United States of America, approved the 29th day of July, 1846 (9th Statutes at Large, page 41), it was enacted—

"Whenever a claim on the United States aforesaid shall hereafter have been allowed by a resolution or act of Congress, and thereby directed to be paid, the money shall not, nor shall any part thereof, be paid to any person or persons other than the claimant or claimants, his or their executor or executors, administrator or administrators, unless such person or persons shall produce to the proper disbursing officer a warrant of attorney executed by such claimant or claimants, executor or executors, administrator or administrators, after the enactment of the resolution or act allowing the claim; and every such warrant of attorney shall refer to such resolution or act, and expressly recite the amount allowed thereby, and shall be attested by two competent witnesses, and be acknowledged by the person or persons executing it before an officer having authority to take the
4 acknowledgment of deeds, who shall certify such acknowledgment; and it shall appear by such certificate that such officer at the time of the making of such acknowledgment read and fully explain' such warrant of attorney to the person or persons acknowledging the same."

That by the 1st section of the act of Congress of the United States of America, approved 26th of February, 1853 (10th Statutes, p. 170), it is enacted:

"All transfers and assignments hereinafter made of any claim upon the United States, or any part or share thereof, or interest thereon, whether absolute or conditional, and whatever may be consideration therefor, and all powers of attorney, or orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses after the allowance of such

claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

VI. That neither the said petitioners nor the said William Leetham, nor the said William Leetham and James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of the said John Leetham, deceased, nor did any or either of them, at any time after the passage of said act of Congress approved July 7th, 1870, execute any power or warrant of attorney, or give any written or verbal direction, authority, or power to any person or persons whatsoever to demand, receive, or receipt for any sum or sums of money payable with respect to said act of Congress, or to receive or endorse in any way said draft issued and payable as aforesaid.

VII. That by reason of the premises, and of the said legislative enactments, the said William Bailey and the said William Leetham, and the said William Leetham and James Leetham, executors, and the said Elizabeth Leetham, executrix of the last will and testament of the said
5 John Leetham, deceased, were the sole persons entitled to demand, receive, and endorse the said draft so issued as aforesaid, and to demand, receive, and receipt for the money due and payable by virtue of the provisions of said act of Congress approved July 7th, 1870.

VIII. That notwithstanding the said draft, so issued in pursuance and in execution of said acts of Congress approved July 7th, 1870, on said account, requisition, and warrant, was payable to the said William Bailey, William Leetham, and John Leetham, and their legal representatives as aforesaid, yet the said draft was delivered, and payment thereof, on said 12th day of July, 1870, made to and received by one A. E. Godeffroy, upon the direction of R. W. Tayler, Comptroller of the Treasury of the United States, written and endorsed on said draft, in the words and figures following:

"Pay on the endorsement of A. E. Godeffroy, attorney in fact.
"R. W. TAYLER, *Comptroller.*"

And upon the endorsements made on said draft by the said A. E. Godeffroy, as folllows:

"WM. BAILEY,
"By A. E. GODEFFROY,
*Att'y in fact.*
"JOHN LEETHAM,
"By E. E. GODEFFROY,
*Att'y in fact.*
"WM. LEETHAM,
"By A. E. GODEFFROY,
*"Att'y in fact."*

IX. That the sole ground and pretended authority for the delivery and payment of said draft, and for the payment of the moneys due with respect to said act of Congress, to the said A. E. Godeffroy, was a power of attorney to the said A. E. Godeffroy, executed on the 6th day of February, A. D. 1869, by the said William Bailey and William Leetham, and by the
6 said William Leetham, James Leetham, and Elizabeth Leetham, executors and executrix of the last will and testament of the said John Leetham, deceased; and no other warrant or power of attorney or au-

thority of any kind whatsoever, either verbal or written, was presented by or on behalf of said A. E. Godeffroy, or considered by the said R. W. Tayler, Comptroller, as aforesaid, or by any of the officers of the United States, for the delivery of said draft, and the payment of said money to said A. E. Godeffroy.

X. That duly authenticated copies of said account, and of said requisition, and of said draft, with the endorsements thereon as aforesaid, and of said power of attorney are filed herewith and made a part of this petition, being marked respectively "Labuan Exhibit No. 1," and "No. 2."

XI. That the said A. E. Godeffroy has not nor has any person on his behalf, paid to the said William Bailey, or to the said William Leetham, or the said John Leetham, or to their or any of their legal representatives, nor has the said William Bailey, or the said William Leetham, or the said John Leetham, or their or either of their legal representatives, or any person on their behalf ever received any sum or sums of money whatsoever, or any equivalent, indemnity, or satisfaction of any kind in respect of said draft, or the proceeds thereof, or any part thereof, or in respect of the said act of Congress approved July 7th, 1870.

XII. That because and by reason of the premises, and of said statutory enactments said warrant or power of attorney was and is absolutely null and void, and gave to the said A. E. Godeffroy no right or authority to endorse said draft or to demand, receive, or receipt for the proceeds thereof, or to demand and receive or receipt for any sum or sums of money that became due and payable under and by virtue of said act of Congress approved July 7th, 1870, and that the payment of said draft and of said moneys to said A. E. Godeffroy was in violation of law, and null
7 and void, and did not release or discharge the United States from the obligation to pay said moneys to the said William Bailey, William Leetham, and John Leetham, or their legal representatives, as required by the provisions of said act of Congress approved July 7th, 1870.

XIII. That after the passage of said act of Congress approved July 7th, 1870, demand was duly made of the said United States for the payment of said moneys so due as aforesaid to the said William Bailey and William Leetham, and the said William Leetham and James Leetham, executors, and Elizabeth Leetham, executrix, of the last will and testament of the said John Leetham, deceased, but payment thereof was refused, and is still refused.

XIV. That heretofore, to wit, on the 1st day of March, A. D. 1871, the said William Leetham and James Leetham, executors, and Elizabeth Leetham, executrix, of the last will and testament of the said John Leetham, deceased, for the consideration named in the instrument of assignment, assigned and transferred to the said William Bailey and William Leetham all the right and interest of the estate of the said John Leetham in and to the moneys and indemnity due under and in pursuance of said act of Congress to the petitioners, William Bailey and William Leetham, and that no other assignment of said claim or any part thereof has at any time been made.

XV. That the said William Leetham died on the fourteenth day of January, A. D. 1875, and by his last will and testament appointed the said Sarah Leetham executrix and Henry Cooper Gleadow executor, and they have duly qualified as such executrix and executor.

XVI. That your petitioners and the said James Leetham and Elizabeth Leetham are now, and the said William Leetham and the said
8 John Leetham were, subjects of Her Britannic Majesty, and as such they all maintained a strict neutrality during the late rebellion against the said United States, and did not in any way voluntarily aid, abet, or give encouragement to the said rebellion.

XVII. That under the constitution and laws of the United Kingdom of Great Britain and Ireland, citizens of the United States of America have a remedy against the Government of Her Britannic Majesty in like cases similar in its character to that your petitioners now seek to avail themselves of in this court.

XVIII. That by reason of the premises, there is still due from the United States of America, and payable to your petitioners, in pursuance of the provisions of said act of Congress approved July 7th, 1870, the said sum of $131,221.34, with interest, as provided by said act, and $5,000 without interest.

Wherefore your petitioners ask judgment for said sum of one hundred and thirty-six thousand two hundred and twenty-one dollars and thirty-four cents ($136,221.34), with interest on one hundred and thirty-one thousand two hundred and twenty-one dollars and thirty-four cents ($131,221.34) from the 2d day of June, 1862.

The petitioners' address is Hull, England; the address of their attorney is Nathaniel Wilson, 635 F street, Washington, D. C.

WM. BAILEY.
SARAH LEETHAM.
H. COOPER GLEADOW.

Be it remembered that on the twenty-fourth day of April, 1876, before me, Andrew Marvel Jackson, of the port of Hull, a commissioner for taking oaths in the supreme court of judicature of England; and also a notary public by lawful authority, duly admitted and sworn, per-
9 sonally appeared William Bailey and Sarah Leetham, and on the twenty-fifth day of April, 1876, personally appeared Henry Cooper Gleadow, all of whom are to me personally known to be the persons who signed the foregoing petition, who, being first duly sworn, depose that they are the petitioners in the foregoing petition by them subscribed; that no transfer or assignment of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimants, the petitioners, are justly entitled to the amount claimed in said petition from the United States, and that they believe the facts stated in said petition are true.

Hull, 25th April, 1876.

[SEAL.] AND'W M. JACKSON,
*A Com'r for taking oaths in the Supreme Court of Judicature of England, and also a Notary Public.*

[Inland revenue stamp, canceled.]

UNITED STATES CONSULAR AGENCY,
*Hull, 25th April*, 1876.

I, the undersigned, consular agent of the United States of America at Hull, do hereby certify that the above is the true and genuine signature of

And'w M. Jackson, notary public at this port, and as such is entitled to full faith and credit.

[SEAL.]

JOSEPH ATKINSON,
*U. S. Consular Agent.*

TREASURY DEPARTMENT, REGISTER'S OFFICE,
*Washington, D. C., April 3d*, 1876.

Pursuant to section 886 of the Revised Statutes of the United States, I, John Allison, Register of the Treasury Department, do hereby certify that the annexed copy of the report of the First Auditor of the Treasury, numbered 175006 upon the account of William Bailey, William Leetham, John Leetham, De Jersey & Company, and Francisco Amendiaz, as admitted and certified by the comptroller; also copy of treasury warrant No. 848, and copies of drafts Nos. 3713, 3714, and 3715, with the endorsements thereon, are a transcript from the books and proceedings of the Treasury.

JOHN ALLISON, *Register.*

Be it remembered that John Allison, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In witness whereof I, B. H. Bristow, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department, at the city of Washington, this third day of April, in the year of our Lord 1876.

[SEAL.]

B. H. BRISTOW,
*Secretary of the Treasury.*

No. 175006.]

TREASURY DEPARTMENT,
*First Auditor's Office, July* 11, 1870.

I hereby certify that I have examined and adjusted an account between the United States and the parties hereinafter named, and find that the sum of two hundred and eight thousand five hundred and twenty-one $\frac{47}{100}$ dollars is due from the United States to them, under a decree of the district court of the United States for the southern district of New York, pronounced March 25, 1868, on account of the illegal capture of the British steamer Labuan, and her cargo, by a cruiser of the United States, which sum is payable in pursuance of the provisions of an act to carry into effect the decree aforesaid, approved July 7, 1870, viz:

| | |
|---|---|
| To Wm. Bailey, Wm. Leetham, and John Leetham, of England, owners of said steamer or their legal representatives..... | $200,070 34 |
| To Messrs. De Jersey & Company, part owners of the cargo of said steamer, or their legal representatives..... | 5,379 49 |
| To Francisco Amendiaz, of Matamoras, Mexico, part owner of the cargo of said vessel, or his legal representatives... | 3,071 64 |
| | $208,521 47 |

11 As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon $208,521.47.

T. L. SMITH, *First Auditor.*

To the COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance this eleventh day of July, 1870.

R. W. TAYLER, *Comptroller.*

Special R. W. T.
To the REGISTER OF THE TREASURY.

*Exhibit No. 1, to original petition.—Filed May 13, 1876.—J. R.*

*Draft No. 3713 on Treasury warrant No. 548, pt.* G. W. C. W. P. M. W. L.

TREASURY OF THE UNITED STATES,
*Washington, D. C., July 12th, 1870.*

Treasury proper pay to Wm. Bailey, Wm. Leetham, and John Leetham, of England, owners, or their legal representatives, or order, two hundred thousand and seventy $\frac{34}{100}$ dollars.

L. R. TUTTLE,
*Ass't Treasurer of the United States.*

$200,070.34.] Registered July 12th, 1870.
TREASURER U. S., *Washington, D. C.*

JOHN ALLISON,
*Register of the Treasury.*

(Endorsed across face:) Paid by Treasurer U. S. July 12th, 1870.
(Endorsed on back:) Pay on endorsement of A. E. Godeffroy, attorney in fact.

R. W. TAYLER, *Comptroller.*
WM. BAILEY,
By A. E. GODEFFROY,
*Attorney in fact.*
JOHN LEETHAM,
By A. E. GODEFFROY,
*Att'y in fact.*
WILLIAM LEETHAM,
By A. E. GODEFFROY,
*Att'y in fact.*

*Draft No. 3714 on Treasury warrant No. 548, pt.* G. W. C. W. P. M. W. L.

TREASURY OF THE UNITED STATES,
*Washington, D. C., July 12th, 1870.*

12 Treasury proper, pay to De Jersey & Company, part owners of the cargo of British steamer Labuan, or their legal representatives, or order, five thousand three hundred and seventy-nine $\frac{49}{100}$ dollars.

L. R. TUTTLE,
*Ass't Treasurer United States.*

$5,379.49.] Registered July 12th, 1870.

JOHN ALLISON,
*Register of the Treasury.*

ASS'T TREASURER U. S., *New York.*

(Endorsed across face:) Paid Sept. 12th, 1870.

(Endorsed on back:) Pay on the endorsement of Charles F. Peck, attorney in fact, as per power on file.

R. W. TAYLER, *Comptroller.*

SEPT. 9TH, 1870.

Pay Barlow, Larocque & McFarland, or order.

C. F. PECK,
*Attorney in fact for De Jersey & Company.*

Barlow, Larocque & Macfarland, dep. in B'k S. of N. Y., cr. Samuel Chas. Barlow.

G. W. DWIGHT.

G. W. C. W. P.
M. W. L.

*Draft No. 3715 on Treasury warrant No. 848, pt.*

TREASURY OF THE UNITED STATES,
*Washington, D. C., July 12th,* 1870.

Treasury proper pay to Francis Amendiaz, of Matamoras, Mexico, part owner of cargo of British steamer Labnan, or his legal representatives, or order, three thousand and seventy-one $\frac{64}{100}$ dollars.

L. R. TUTTLE,
*Ass't Treasurer of the United States.*

$3,071.64.] Registered July 12th, 1870.

JOHN ALLISON,
*Register of the Treasury.*

ASS'T TREASURER U. S., *N. Y.*

(Endorsed across face:) Paid December 21, 1870.

(Endorsement on back:)

COMPTROLLER'S OFFICE, *Dec.* 1, 1870.

This draft may be paid to order of Paulino Echeverria, attorney in fact. Power filed in this office.

WM. HEMPHILL JONES,
*Acting Comptroller.*

Paul Echeverria, att'y. For deposit in City Bank.

P. ECHEVERRIA, *Att'y.*
B. CARTRIGHT, *Cas.*

Treasury settlement warrant.

No. 848.

$208,521.47.

Appropriations:

| | |
|---|---|
| Payment for the illegal capture of the British steamer Labuan and cargo, per act July 7th 1870 | 208,521 47 |
| * Wm. Bailey, Wm. Leetham, and John Leetham, of England, owners, or their legal representatives | 200,070 34 |
| * De Jersey & Company, part owners of the cargo of said steamer, or their legal representatives | 5,379 49 |
| Francisco Amendiaz, of Matamoras, Mexico, part owner of the cargo of said vessel, or his legal representatives | 3,071 64 |

Rec'd 3714.

C. F. PECK,
*Attorney.*

* W. P. M. W. L. J. H. S.

TREASURY DEPARTMENT.

To the Treasurer of the United States, greeting:

Pay to the following parties as mentioned in the margin,* or order, to be charged to the appropriations named in the margin, two hundred and eight thousand five hundred and twenty-one dollars and forty-seven cents, due on settlement pursuant to a certificate of the First
13 Comptroller, No. 175006, dated the 11th day of July, 1870, recorded by the Register. For so doing this shall be your warrant.

Given under my hand and the seal of the Treasury Department this 12th day of July, in the year of our Lord one thousand eight hundred and seventy, and of Independence the ninety-fifth.

[SEAL.] J. F. HARTLEY,
*Assistant Secretary.*

C. F. C. R. & E., 12th.

Countersigned:

T. G.

R. W. TAYLER,
*First Comptroller.*

Registered, 12th.

R. P. E.

JOHN ALLISON,
*Register.*

12th. OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following draft:

| | |
|---|---|
| No. 3713 on Treasurer | 200,070 34 |
| No. 3714 on New York | 5,379 49 |
| No. 3715 on " " | 3,071 64 |
| | 208,521 47 |

Special.—R. W. T.

A. E. GODEFFROY.

(Endorsed:) This is the exhibit marked "Labuan Exhibit No. 1" referred to in the petition of William Bailey, Sarah Leetham, and Henry Cooper Gleadow. Signed and sworn before me, on the 24th and 25th days of April, 1876.

AND'W M. JACKSON,
*A Commissioner for taking oaths in the Supreme Court of Judicature of England, and also a Notary Public.*

TREASURY DEPARTMENT, REGISTER'S OFFICE,
*Washington, D. C., August 2d*, 1875.

Pursuant to section 886 of the Revised Statutes of the United States, I, John Allison, Register of the Treasury Department, do hereby
14 certify that the annexed copy of draft No. 3713, issued on Treasury warrant No. 848, with the endorsements thereon; also copy of power of attorney executed on the sixth day of February, 1869, filed with settlement No. 175006 in favor of William Bailey, William Leetham, and John Leetham (in part), are true copies of the originals on file in this office.

W. B. M.

JOHN ALLISON, *Register.*

Be it remembered that John Allison, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, C. F. Burnam, Acting Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department, at the city of Washington, this second day of August, in the year of our Lord 1875.

[SEAL.] C. F. BURNAM,
*Acting Secretary of the Treasury.*

G. W. C. W. P.

*Draft No.* 3713 *on Treasury warrant No.* 848, *pt.*

TREASURY OF THE UNITED STATES.

Treasury proper pay to William Bailey, William Leetham, and John Leetham, of England, owners, or their legal representatives, or order, two hundred thousand and seventy $\frac{34}{100}$ dollars.

Washington, D. C., July 12, 1870.

L. R. TUTTLE,
*Ass't Treasurer of the United States.*

$200,070.34.] Registered July 12th, 1870.

JOHN ALLISON,
*Register of Treasury.*

TREASURER U. S., *Washington, D. C.*

(Endorsed across the face:) Paid by Treasurer U. S. July 12, 1870.

Endorsed: Pay on the endorsement of A. E. Godeffroy, att'y in fact.

R. W. TAYLER, *Comptroller.*

WM. BAILEY,
15 By A. E. GODEFFROY,
*Att'y in Fact.*

JOHN LEETHAM,
By A. E. GODEFFROY,
*Att'y in Fact.*

WM. LEETHAM,
By A. E. GODEFFROY,
*Att'y in Fact.*

[One pound ten shillings. Hall, 13, 11, '68.]

Know all men by these presents that we, William Baily, of the borough of Kingston-upon-Hull, ship-owner; William Leetham, of the same borough, ship-owner; James Leetham, also of the same borough, ship-owner; and Elizabeth Leetham, of the city of York, widow, now or late owners of the steamship or vessel called the Labuan, late of Hull, of the burthen of seven hundred and twenty-three tons net register, or thereabouts, have, and each and every of us hath, made, ordained, constituted, and appointed, and by these presents do, and each and every of us doth, make, ordain, constitute, and appoint A. E. Godeffroy, of New York, in the United States of America, merchant, to be our true and lawful attorney, for us

and in our names and on our behalf, and to and for our own use and benefit, to receive from the Government of the United States of America, and from all and every person or persons whom it may concern, to pay or satisfy the same, all and every sum and sums of money which now is or are or may become due and payable to us with reference to the above-named steamship or vessel Labuan, together with all charges, damages, interest, and expenses whatsoever due in respect to the same steamship, and upon receipt thereof, or of any part or parts thereof respectively, to sign and give, or to sign, seal, execute, and deliver good and sufficient acquittances, releases, and discharges for the same respectively, and upon nonpayment of the moneys, to take, commence, and prosecute for us, and in our or any of our names, or in the name of our said attorney, all necessary and lawful and proper remedies, actions, suits, expedients, or means for the recovery, receiving, and getting in the same, as he, our said attorney, shall think proper. We, the said William Bailey, William Leetham, James Leetham, and Elizabeth Leetham, hereby ratify and confirm all and every matter or thing which he or our said attorney shall lawfully do, or cause to be done, in and concerning the premises by virtue of these presents.

16 In witness whereof we have hereunto set our hands and seals the 6th day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

WILLIAM BAILEY. [SEAL.]
WILLIAM LEETHAM. [SEAL.]
JAMES LEETHAM. [SEAL.]
ELIZABETH LEETHAM. [SEAL.]

Signed, sealed, and delivered by the said William Leetham and James Leetham in the presence of—

WILL. HENRY MOSS,
*Notary Public, Hull.*

Signed, sealed, and delivered by the said Elizabeth Leetham in the presence of—

WM. LAWTON,
*Notary Public, York.*

Signed, sealed, and delivered by the said William Bailey in the presence of—

[SEAL.] C. A. MUNRO,
*Consul U. S. A., Lisbon.*

No 19. $2.

[Fifty cents, 50. 50 entry of goods. Endorsed: Godeffroy.]

To all whom these presents shall come:

I, William Henry Moss, notary public, duly authorized, admitted and sworn, residing and practicing at the borough of Kingston-upon-Hull, in that part of the United Kingdom of Great Britain and Ireland called England, do hereby certify that I was present on the fifth day of February, one thousand eight hundred and sixty-nine, and did see William Leetham sign, seal, and deliver the power of attorney on the other side written, and bearing date the sixth day of February, one thousand eight

hundred and sixty-nine, and that I was also present on the sixth day of February, one thousand eight hundred and sixty-nine, and did see James Leetham sign, seal, and deliver the said power of attorney, and that the names "William Leetham" and "James Leetham" appearing at the foot thereof are of the respective proper handswriting of the said William Leetham and James Leetham. And I further certify that the name "Will. Henry Moss," also appearing as the person before whom the said power of attorney was signed, sealed, and delivered by the said William Leetham and James Leetham, is of the proper handwriting of me, the said William Henry Moss.

17 In testimony whereof I have hereunto set my hand and affixed my seal of office, this sixth day of February, one thousand eight hundred and sixty-nine.

[SEAL.] WILL. HENRY MOSS,
*Notary Public, Hull.*

To all whom these presents shall come:

I, William Lawton, notary public, duly authorized, admitted, and sworn, residing and practicing at the city of York, in that part of the United Kingdom of Great Britain and Ireland called England, do hereby certify that I was present on the eighteenth day of February, one thousand eight hundred and sixty-nine, and did see Elizabeth Leetham, sign, seal, and deliver the power of attorney, on the other side written, and bearing date the sixth day of February, one thousand eight hundred and sixty-nine, and that the name "Elizabeth Leetham," appearing at the foot thereof, is of the proper handwriting of the said Elizabeth Leetham. And I further certify that the name of "Wm. Lawton," also appearing as the person before whom the said power of attorney was signed, sealed, and delivered by the said Elizabeth Leetham, is of the proper handwriting of me, the said William Lawton.

In testimony whereof I have hereunto set my hand and affixed my seal of office this eighteenth day of February, one thousand eight hundred and sixty-nine.

[SEAL.] WM. LAWTON,
*Notary Public, York.*

HULL, 20*th February*, 1869.

I hereby certify that the within is the signature of Wm. Lawton, a notary public at York.

[SEAL.] HENRY T. ATKINSON,
*U. S. Consular Agent.*

HULL, 20*th February*, 1869.

I also certify that the within is the signature of Will. Henry Moss, a notary public at Hull.

[SEAL.] HENRY T. ATKINSON,
*U. S. Consular Agent.*

18 (Endorsed:) Dated 6th February, 1869. Messrs. Bailey, Leetham and others. A. E. Godeffroy, esq., power of attorney to receive money from the American Government in respect of the seizure and sale of the Labuan. Holden & Sons, Hull.

[Endorsements.]

This is the exhibit marked "Labuan Exhibit No. 1," referred to in the petition of William Bailey, Sarah Leetham, and Henry Cooper Gleadow.
Signed and sworn before me on the seventeenth day of March, 1876.

AND. M. JACKSON,
*A Commissioner for taking oaths in the Supreme Court of Judicature of England, and also a Notary Public.*

"LABUAN."—EXHIBIT No. 2.

This is the exhibit marked "Labuan Exhibit No. 2," referred to in the petition of William Bailey, Sarah Leetham, and Henry Cooper Gleadow.
Signed and sworn before me on the 24th and 25th days of April, 1876.

AND. M. JACKSON,
*A Commissioner for taking oaths in the Supreme Court of Judicature of England, and also a Notary Public.*

Exhibit No. 2 to original petition. Filed May 13, 1876. J. R.

19 II. *Traverse.—Filed June* 14, 1876.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein, and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of one hundred and thirty-six thousand two hundred and twenty-one dollars and thirty-four cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

THOMAS SIMONS,
*Ass't Att'y-General.*

20 III. *Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The Congress of the United States, by an act approved July 7, 1870, entitled "An act to carry into effect the decree of the district court of the United States for the southern district of New York, in the case of the British steamer Labuan," enacted that there be paid, out of any money in the Treasury not otherwise appropriated, to William Bailey, William Leetham, and John Leetham, of England, or their legal representatives, owners of the British steamer Labuan, $131,221.30, with interest from June 2, 1862, to the time of payment, and $5,000 without interest, which moneys were declared by said act to be "due under a decree of the district court of the southern district of New York, pronounced March twenty-

fifth, eighteen hundred and sixty-eight, on account of the illegal capture of the British steamer Labuan and her cargo, by a cruiser of the United States."

II. In pursuance of the said act of Congress, on the 11th of July, 1870, an account between the United States and the persons named in said act was examined and adjusted by the First Auditor of the Treasury, and admitted and certified by the Comptroller of the Treasury, wherein and whereby it was stated and admitted that the United States was indebted to William Bailey, William Leetham, and John Leetham, owners of said steamer, or their legal representatives, in the sum of $200,070.34. The account was in the words and figures following:

"No. 175006.] TREASURY DEPARTMENT,
"FIRST AUDITOR'S OFFICE,
"*July 11th*, 1870.

"I hereby certify that I have examined and adjusted an account between the United States and the parties hereinafter named, & find that the sum of two hundred & eight thousand five hundred & twenty-one $\frac{47}{100}$ dollars is due from the United States to them, under a decree of the district court of the U. S. for the southern district of New York, pronounced March 25, 1868, on account of the illegal capture of the British steamer Labuan & her cargo, by a cruiser of the U. S., which sum is payable in pursuance of the provisions of an act to carry into effect the decree aforesaid, approved July 7th, 1870, viz:

| | |
|---|---|
| "To Wm. Bailey, Wm. Leetham, & John Leetham, of England, owners of said steamer, or their legal representatives.. | $200,070 34 |
| "Messrs. De Jersay & Company, part owners of the cargo of said steamer, or their legal representatives..... ..... | $5,379 49 |
| "Francisco Amendiaz, of Matamoras, Mexico, part owner of said vessel, or his legal representatives..... | $3,071 64 |
| | $208,521 47 |

21 as appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.
"$208,521.47.]

"T. L. SMITH, *First Auditor.*

"To the COMPTROLLER OF THE TREASURY.

"COMPTROLLER'S OFFICE.

"I admit and certify the above balance this eleventh day of July, 1870.
"R. W. TAYLER, *Comptroller.*

"Special.—R. W. T.
"To the REGISTER OF THE TREASURY."

III. On the 12th day of July, 1870, a warrant was issued on the account and certificate described in the foregoing proposition in the words and figures following:

Treasury settlement warrant.

No. 848.

$208,521.47.

Appropriations:

Payment for the illegal capture of the British steamer Labuan and cargo, per act July 7th 1870..... $208,521 47

*8. Wm. Bailey, Wm. Leetham, & John Leetham, of England, owners, or their legal representatives..... 200,070 34

*8. De Jersay & Co., part owners of the cargo of said steamer, or their legal representatives..... 5,379 49

*8. Francisco Amendiaz, of Matamoras, Mexico, part owner of the cargo of said vessel, or his legal representatives..... 3,071 64

Rec'd 3714.

C. F. PECK,
*Attorney.*

W. P. M. W. S. J. H. S.

TREASURY DEPARTMENT.

To the Treasurer of the United States greeting:

Pay to the following parties, as mentioned in the margin,* or order, to be charged to the appropriations named in the margin, two hundred and eight thousand five hundred & twenty-one dollars and forty-seven cents, due on settlement, pursuant to a certificate of the First Comptroller, No. 175006, dated the 11th day of July, 1870, recorded by the Register. For so doing this shall be your warrant.

Given under my hand and the seal of the Treasury Department this 12th day of July, in the year of our Lord one thousand eight hundred and seventy, and of Independence the ninety-fifth.

J. F. HARTLEY,
*Assistant Secretary.*

C. T. C. R. of E., 12.

Countersigned:
T. G.

R. W. TAYLER,
*First Comptroller.*

Registered:
R. P. E.

JOHN ALLISON,
*Register.*

12 OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following draft:

| | |
|---|---|
| No. 3713, on Treasurer | 200,070 34 |
| No. 3714, on New York | 5,379 49 |
| No. 3715, on " " | 3,071 64 |
| | 208,521 47 |

Special.—R. W. T.

A. E. GEODEFFROY.

(Form No. 10.)

IV. On the 12th day of July, 1870, a draft, No. 3713, on the warrant described in the foregoing proposition, was issued on the Treasurer of the United States, in the words and figures following:

22 "*Draft No.* 3713 *on Treasury warrant No.* 848.

"$200,070.34.] TREASURY OF THE UNITED STATES,
"*Washington, D. C., July* 12, 1870.

"Treasury proper pay to Wm. Bailey, Wm. Leetham, & John Leetham, of England, owners, or their legal representatives, or order, two hundred thousand & seventy $\frac{34}{100}$ dollars.

"L. R. TUTTLE,
"*Ass't Treasurer of the United States.*

"Registered July 12, 1870.

"JOHN ALLISON,
"*Register of the Treasury.*

"TREASURER U. S., *Washington, D. C.*"

V. On the same day, July 12, 1870, the said draft described in the fourth proposition was delivered, and the proceeds thereof and the moneys therein specified were paid to one A. E. Godeffroy.

VI. The moneys specified in said draft were paid to the said Godeffroy, in accordance with an order indorsed on the back of the said draft by the Comptroller of the Treasury in the following words:

"Pay on the endorsement of A. E. Godeffroy, att'y in fact.
"R. W. TAYLER, *Comptroller.*"

And upon the following indorsements made by the said A. E. Godeffroy:

"WM. BAILEY,
"By A. E. GODEFFROY,
"*Att'y in fact.*
"JOHN LEETHAM,
"By A. E. GODEFFROY,
"*Att'y in fact.*
"WILLIAM LEETHAM,
"By A. E. GODEFFROY,
"*Att'y in fact.*"

VII. The payment of the moneys specified in said account, warrant, and draft, described in the foregoing propositions, was made upon and in pursuance of the said direction and authority made and given in writing by the Comptroller of the Treasury on the back of the draft described in the foregoing propositions, and of the indorsements made thereon by the said A. E. Godeffroy.

VIII. The said direction made on the back of the said draft described in the foregoing propositions, by the Comptroller of the Treasury, and the indorsements thereon by the said A. E. Godeffroy, were made by no authority or warrant save that conferred by a warrant of attorney executed by William Bailey, William Leetham, James Leetham, and Elizabeth Leetham on the 6th day of February, 1869, and which is in the words and figures following:

"[One pound ten shillings. Hull, 13, 11, 68.]

"Know all men by these presents that we, William Bailey, of the borough of Kingston-upon-Hull, ship-owner; William Leetham, of the same borough, ship-owner; James Leetham, also of the same borough, ship-owner; and Elizabeth Leetham, of the city of York, widow, now or late owners of the steamship or vessel called the 'Labuan,' late of Hull, of the burthen of seven hundred and twenty-three tons net register, or thereabouts, have, and each and every of us hath, made, ordained, constituted, and appointed, and by these presents do, and each and every of us doth, make, ordain, constitute, and appoint, A. E. Godeffroy, of New York, in the United States of America, merchant, to be our true and lawful attorney, for us and in our names and on our behalf, and to and for our own use and benefit, to receive from the Government of the United States of America, and from all and every person or persons whom it may concern to pay or satisfy the same, all and every sum and sums of

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money which now is or are or may become due and payable to us with reference to the above-named steamship or vessel Labuan, together with all charges, damages, interest, and expenses whatsoever due in respect to the same steamship, and upon receipt thereof, or of any part or parts thereof respectively, to sign and give, or to sign, seal, execute, and deliver, good and sufficient acquittances, releases, and discharges for the same respectively, and upon non-payment of the moneys to take, commence, and prosecute for us, and in our or any of our names, or in the name of our said attorney, all necessary and lawful and proper remedies, actions, suits, expedients, or means for the recovery, receiving, and getting in the same as he, our said attorney, shall think proper. We, the said William Bailey, William Leetham, James Leetham, and Elizabeth Leetham hereby ratify and confirm all and every matter or thing which he or our said attorney shall lawfully do, or cause to be done, in and concerning the premises by virtue of these presents.

"In witness whereof we have hereunto set our hands and seals the sixth day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

"WILLIAM BAILEY. [SEAL.]
"WILLIAM LEETHAM. [SEAL.]
"JAMES LEETHAM. [SEAL.]
"ELIZABETH LEETHAM. [SEAL.]

"Signed, sealed, and delivered by the said William Leetham and James Leetham, in the presence of—

"WILL. HENRY MOSS,
"*Notary Public, Hull.*

"Signed, sealed, and delivered by the said Elizabeth Leetham in the presence of—

"WM. LAWTON,
"*Notary Public, York.*

"Signed, sealed, and delivered by the said William Bailey in the presence of—

[SEAL.] "C. A. MUNRO,
"*Consul U. S. A., Lisbon.*

"No. 19. 82.

"[Fifty cents, 50. 50 entry of goods. Endorsed: Godeffroy.]

"To all whom these presents shall come:

"I, William Henry Moss, notary public, duly authorized, admitted, and sworn, residing and practicing at the borough of Kingston-upon-Hull, in that part of the United Kingdom of Great Britain and Ireland called England, do hereby certify that I was present on the fifth day of February, one thousand eight hundred and sixty-nine, and did see William Leetham sign, seal, and deliver the power of attorney on the other side written, and bearing date the sixth day of February, one thousand eight hundred and sixty-nine, and that I was also present on the sixth day of February, one thousand eight hundred and sixty-nine, and did see James Leetham sign, seal, and deliver the said power of attorney, and that the names 'William

Leetham' and 'James Leetham,' appearing at the foot thereof, are of the respective proper handswriting of the said William Leetham and James Leetham. And I further certify that the name 'Will. Henry Moss,' also appearing as the person before whom the said power of attorney was signed, sealed, and delivered by the said William Leetham and James Leetham is of the proper handwriting of me, the said William Henry Moss.

"In testimony whereof I have hereunto set my hand and affixed my seal of office this sixth day of February, one thousand eight hundred and sixty-nine.

[SEAL.] "WILL. HENRY MOSS,
"*Notary Public, Hull.*

"In testimony whereof I have hereunto set my hand and affixed my seal of office this sixth day of February, one thousand eight hundred and sixty-nine.

[SEAL.] "WILL. HENRY MOSS,
"*Notary Public, Hull.*

"To all whom these presents shall come:

"I, William Lawton, notary public, duly authorized, admitted, and sworn, residing and practicing at the city of York, in that part of the
24 United Kingdom of Great Britain and Ireland called England, do hereby certify that I was present on the eighteenth day of February, one thousand eight hundred and sixty-nine, and did see Elizabeth Leetham sign, seal, and deliver the power of attorney on the other side written, and bearing date the sixth day of February, one thousand eight hundred and sixty-nine, and that the name 'Elizabeth Leetham,' appearing at the foot thereof, is of the proper handwriting of the said Elizabeth Leetham. And I further certify that the name of 'William Lawton,' also appearing as the person before whom the said power of attorney was signed, sealed, and delivered by the said Elizabeth Leetham, is of the proper handwriting of me, the said William Lawton.

"In testimony whereof I have hereunto set my hand and affixed my seal of office this eighteenth day of February, one thousand eight hundred and sixty-nine.

[SEAL.] "WM. LAWTON,
"*Notary Public, York.*

"HULL, *20th February*, 1869.

"I hereby certify that the within is the signature of William Lawton, a notary public at York.

[SEAL.] "HENRY T. ATKINSON,
"*U. S. Consular Agent.*

"HULL, *20th February*, 1869.

"I also certify that the within is the signature of Will. Henry Moss, a notary public at Hull.

[SEAL.] "HENRY T. ATKINSON,
"*U. S. Consular Agent.*

"Record, pp. 64 & 65."

IX. In the month of August, 1870, the attorney in fact for the said William Bailey and William Leetham, James Leetham and Elizabeth Leetham, executors and executrix of the said John Leetham, deceased, the owners of the steamer Labuan, named in said act of Congress, duly authorized thereto by a power of attorney, executed in the month of August, 1870, made a demand on the Secretary of the Treasury on behalf of the said owners of the said steamer Labuan, and their legal representatives, for the moneys appropriated by said act of Congress, and specified in said account, warrant, and draft described in the foregoing propositions, but payment thereof to said attorney in fact was refused because payment had already been made to the said A. E. Godeffroy.

X. The said William Bailey, William Leetham, and John Leetham have not, nor has any one of them, nor have their legal representatives, or the legal representatives of either of them, nor has any person, duly authorized on their behalf, received the moneys appropriated by said act of Congress, and specified in said account, warrant, and draft, or any part thereof.

XI. The said owners of the said steamer Labuan, named in said act of Congress, and in said account, warrant, and draft did not, nor did any or either of them, nor did their legal representatives, or the legal representatives of either or any of them, make or execute after the passage of said act, or at any time after the statement of said account and the issue of said warrant, any power or warrant of attorney whatsoever, or any transfer or assignment whatsoever to the said A. E. Godeffroy in relation to the claim and indebtedness described in said act of Congress, and in said account, warrant, and draft.

25 XII. The said owners of the said steamer Labuan, named in said act of Congress, and in said account, warrant, and draft, have not at any time since the passage of the said act of Congress, nor have any or either of them, or their legal representatives, or the legal representatives of either of them, made or executed any power or warrant of attorney save and except a power or warrant of attorney executed to A. K. Rollit, esq., in the month of August, 1870, and a power or warrant of attorney executed to Edwin Gerard on the 22d of November, 1873. No moneys have been paid in respect of the said claim and indebtedness described in said act of Congress, account, warrant, and draft, under or by virtue of said powers or warrant of attorney, or either of them.

XIII. The said owners of said steamer Labuan, named in said act of Congress and in said account, warrant, and draft, have not at any time since the passage of said act of Congress, nor have their or either of their legal representatives made any transfer or assignment of the said claim or indebtedness described in said act of Congress, or in said account, warrant, or draft, save and except an assignment made and executed on the 1st day of March, 1871, whereby the said William Leetham, James Leetham, and Elizabeth Leetham, executors and executrix of the will of the said John Leetham, transferred to the said William Bailey and William Leetham all the interest of the estate of the said John Leetham, deceased, in the said judgment entered by the district court of the southern district of New York, and in the moneys appropriated by the said act of Congress, and constituted the said William Bailey and William Leetham, jointly, and each of them severally, the attorneys in fact of the estate of the said John

Leetham, deceased, with authority to prosecute for them and in their names, or in the names of the said attorneys, or either of them, all suits necessary for the recovery of said moneys.

XIV. The owners of the said steamer Labuan, at the time of the passage of said act of Congress, were William Bailey, the owner of $\frac{32}{64}$; William Leetham, the owner of $\frac{24}{64}$; William Leetham, James Leetham, and Elizabeth Leetham, executors of John Leetham, deceased, the joint owners of $\frac{8}{64}$. They were all British subjects and residents of York and Hull, England.

XV. William Bailey, the petitioner, is the identical William Bailey named in the act of Congress referred to in the first proposition, and was the owner of $\frac{32}{64}$ of said steamer.

XVI. William Leetham, named in the act of Congress as one of the owners of said steamer, died on the 14th day of January, 1875. He was owner of said $\frac{24}{64}$ of said steamer. The petitioners, Sarah Leetham and Henry Cooper Gleadow, are his legal representatives.

26 XVII. John Leetham, named in said act of Congress as one of the owners of said steamer, died on the 28th of March, 1862, and the said William Leetham and James Leetham were the executors and Elizabeth Leetham was the executrix of his will.

XVIII. The petitioner, William Bailey, is one of the persons named in said power of attorney and assignment, and the petitioners, Sarah Leetham and Henry Cooper Gleadow, are the legal representatives of the said William Leetham, deceased, assignee and attorney in fact named in said power of attorney and assignment.

XIX. The petitioners are British subjects, as were all the owners named in the act of Congress referred to in the first proposition, and none of them voluntarily aided, abetted, or gave encouragement to the late rebellion.

XX. Citizens of the United States have a remedy against the Government of Her Britannic Majesty in cases like that set forth in the petition in this case, similar to that which the petitioners now seek to enforce in this court.

XXI. The claimants, in May, 1871, instituted a suit against the said A. E. Godeffroy, and filed therein the following complaint, which was served on the 29th day of May, 1871.

This suit was not prosecuted to judgment, but was dismissed on the 28th day of February, 1879, by the following order:

"Court of common pleas for the city and county of New York.

"WILLIAM BAILEY AND WILLIAM LEETHAM }
*against*
ADOLPHUS E. GODEFFROY. }

"Trial to be had in the city and county of New York.

"The complaint of the above-named plaintiffs respectfully shows:

"That heretofore, and in the life-time of John Leetham, late of Hull, England, the plaintiffs above named, together with the said John Leetham, were the owners of a certain steamship or vessel called the Labuan.

"That on or about the first day of February, in the year one thousand eight hundred and sixty-two, the said steamer was seized by an armed

vessel of the United States and brought into the port of New York, and there libelled in the district court of the United States for the southern district of New York, by the attorney of the United States for the southern district of New York, in the name of the United States of America, as liable to be condemned as prize.

"That the plaintiffs intervened in said cause, claiming the said vessel as owners, and such proceedings were had that, after the rendition of a decree dismissing the said libel and releasing the said vessel, a reference was ordered by the said court to a special commissioner to ascertain and report the amount of damages sustained by the claimants by reason of the seizure and capture of the said vessel.

"That subsequently, and on or about the twenty-fifth day of March, in the year one thousand eight hundred and sixty-eight, the said special commissioner having made his report, by which it, among other things,
27 appeared that the plaintiffs, as owners of the said steamer Labuan, had sustained damages by reason of the said seizure and capture to the amount of one hundred and eighty-one thousand eight hundred and twenty dollars and sixty cents, final judgment was rendered in the said cause in favor of the said William Bailey and William Leetham against the libellants and captors for the said sum so reported due, on the ground that the said captured property was not lawful prize of war, as by the said judgment, still remaining of record in the office of the clerk of the district court of the United States for the southern district of New York, at the city of New York, reference being thereto had, will more fully appear.

"And the said plaintiffs further show that subsequently, and on or about the seventh day of July, in the year one thousand eight hundred and seventy, by an act of the Congress of the United States, entitled 'An act to carry into effect the decree of the district court of the United States for the southern district of New York, in the case of the British steamer Labuan,' which act was duly approved by the President of the United States on the said seventh day of July, one thousand eight hundred and seventy, it was enacted as follows, that is to say:

"[PRIVATE.—No. 81.]

"An act to carry into effect the decree of the district court of the United States for the southern district of New York, in the case of the British steamer Labuan.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid, out of any money in the Treasury not otherwise appropriated, to William Bailey, William Leetham, and Jno. Leetham, of England, or their legal representatives, owners of the British steamer Labuan, one hundred and thirty-one thousand two hundred and twenty-one dollars and thirty cents, with interest from June second, eighteen hundred and sixty-two, to the time of payment, and five thousand dollars without interest. Also to Messrs. De Jersey and Company, of England, or their legal representatives, part owners of the cargo of the same steamer, three thousand six hundred and thirteen dollars and ninety-two cents, with interest from May twenty-first, eighteen hundred and sixty-two, to the time of payment; and to Francisco Amendiaz, of Matamoras, Mexico, or his legal representatives, part owner of

the cargo of the same steamer, two thousand and sixty-seven dollars and seventeen cents, with interest from June sixth, eighteen hundred and sixty-two, to the time of payment, such sums being due under a decree of the district court of the United States for the southern district of New York, pronounced March twenty-fifth, eighteen hundred and sixty-eight, on account of the illegal capture of the British steamer Labuan and her cargo by a cruiser of the United States.

"Approved July 7th, 1870:

"And the said plaintiffs further show that on or about the twelfth day of July, one thousand eight hundred and seventy, under and in pursuance of the said act of Congress, a draft or check was isued by the Treasury Department of the United States, bearing that date, addressed to the Treasurer of the United States, directing the payment to these plaintiffs, William Bailey, William Leetham, and to the said John Leetham, who was then deceased, or to their legal representatives or order, two hundred thousand and seventy dollars and thirty-four cents, which draft or check was, on or about the said twelfth day of July, one thousand eight hundred and seventy, delivered to the said defendant as the attorney in fact of the said plaintiffs, and in their own right, and of Elizabeth Leetham, James Leetham, and the said William Leetham, as executrix and executors of the last will and testament of the said Jno. Leetham, deceased. That said defendant thereupon endorsed the said check in the names of these plaintiffs and of the said Jno. Leetham, then deceased, as attorney in fact of the said plaintiffs, and of the said John Leetham, and as such attorney in fact received from the Treasury Department of the United States the said sum of two hundred thousand and seventy dollars and thirty-four cents, mentioned in the said draft or check, for the use of the said plaintiffs and of the said executrix and executors of the said last will and testament of the said John Leetham, deceased.

"That the said money was so had and received by the said defendant under and by virtue of a power of attorney in writing executed by the said plaintiffs in conjunction with the said executrix and executors of the said Jno. Leethan, deceased, bearing date the sixth day of February, one thousand eight hundred and sixty-nine."

"And the said plaintiffs further show that the said John Leetham departed this life on or about the twenty-eighth day of March, one thousand eight hundred and sixty-two, having previously duly made and published his last will and testament in due form of law, bearing date the third day of September, one thousand eight hundred and fifty-seven, by which will the said testator appointed his wife, Elizabeth Leetham, executrix, and William Leetham and James Leetham, executors thereof, and that said will was duly proved by the said executrix and executors in the York district of Her Majesty's court of probate, in that part of the United
28 Kingdom of Great Britain and Ireland called England, being the court having jurisdiction thereof, on the ninth day of May, in the year one thousand eight hundred and sixty-two; and that the said executrix and executors duly qualified as such in accordance with the laws of the said United Kingdom in that behalf.

"And the said plaintiffs further show that heretofore, to wit, on or about the first day of March, in the year one thousand eight hundred and seventy-one, the said executrix and executors of the last will and testament of

the said Jno. Leetham, deceased, by an instrument in writing by them duly executed under their respective hands and seals and delivered to the plaintiffs, bargained, sold, assigned, transferred, and set over unto the said plaintiffs all their interest as such executrix and executors in the said claim for damages against the Government of the United States, and the said judgment recovered therefor and in the moneys appropriated by the Congress of the United States by the aforesaid act to the payment thereof; and the said moneys so collected and received as aforesaid from the Government of the United States by the said defendant as the attorney in fact of the said plaintiffs and of the said executrix and executors of the said John Leetham, deceased, as by the said instrument now in the possession of the said plaintiffs, ready to be produced and proved as the court may direct, reference being thereto had, will more fully appear.

"And the said plaintiffs further show that payment of the amount so collected by the defendant as aforesaid has been duly demanded by the plaintiffs of the said defendant before the commencement of this action, but that he has hitherto wholly neglected to pay over the same, or any part thereof.

"The plaintiffs therefore demand judgment in this action against the said defendant for the said sum of two hundred thousand and seventy dollars and thirty-four cents, with interest thereon from the twelfth day of July, in the year one thousand eight hundred and seventy, besides the costs of this action.

"BARLOW, LAROCQUE, & McFARLAND,
"*Attorneys fo' Plaintiffs.*

"At a trial term of the court of common pleas for the city and county of New York, held at the court-house in the city of New York on the 28th day of February, A. D. 1879.

"Present, Hon. Charles P. Daly, one of the judges.

"WILLIAM BAILEY AND WILLIAM LEETHAM,
plaintiffs,
*against*
ADOLPHUS E. GODEFFROY, DEFENDANT.

"On motion of Barlow, Larocque & Macfarland, attorneys for the plaintiffs, and on reading and filing the consent of the attorneys for the respective parties thereto, which is hereto appended, it is ordered that this action be, and the same is hereby, discontinued without costs to either party as against the other."

And upon the foregoing findings of fact the court decides as conclusion of law:

The demand of the claimants has been duly paid and discharged, and their petition should be dismissed.

## IV. *Opinion of the court.*

NOTT, J., delivered the opinion of the court.

Notwithstanding the magnitude of this case and the ability with which it has been pressed upon the court by the claimants' counsel, and the learn-

ing which they have brought into the argument to sustain the claimants' position, we are constrained to say that the law appears to us to be so clearly against the case as to render it needless to state more than our briefly-expressed conclusions.

1. The statute in this case (act 26th February, 1853, 10 Stat. L., 171) does not attach any turpitude to the assignment of a claim or the giving of a power of attorney such as was given by the claimants. It does not prohibit the giving of such assignments and powers, nor prohibit the officers of the Government from acting upon them; it merely declares them to be void. Consequently, no distinction such as was contended for on the argument between the case of a foreigner resident abroad and that of a citizen having knowledge of our laws, can be maintained. The Government was not in delicto in recognizing through its officers the authority which the claimants had given to their agent to receive the money. The question is simply whether such a payment can be recovered over again by the principal, be he foreigner or be he citizen, because the statute declares such powers to be void.

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2. Some distinction may be drawn between this case and McKnight's (98 U. S. R., 179), inasmuch as there a receipt was given by the assignor which discharged the defendant's debt to him upon its payment to his assignees; but, without passing upon that distinction, we are of the opinion that where a payment is made upon a power of attorney properly authenticated, actually given, and sufficiently comprehensive in terms, its validity or invalidity under the statute is no longer in question, and no party to the transaction is at liberty to deny the effectiveness of the payment. Such powers of attorney belong to that class of obligations which may be void while they remain executory, but which are to be treated as valid when they have become executed. Courts cannot enforce them; but if the parties voluntarily give effect to them, sound morality forbids that they should be allowed to question the effectiveness of what they have themselves accomplished.

3. The conduct of the claimants since the payment to their agent as effectually releases the Government from all liability as if the money had actually been paid over to them by their agent. Their learned counsel have endeavored to maintain that the action which they brought against the agent in the courts of New York to recover this money would not preclude them from pursuing their present remedy against the Government unless that suit had been prosecuted to judgment. But the cases cited on the argument to maintain the proposition that the claimants could discontinue the former action against their agent and bring the present action against the Government, belong, we apprehend, to a different class, and depend upon a different principle. There are cases where a plaintiff having two distinct forms of action against the same person may discontinue one suit before judgment and bring his second action in another form. In such the defendant loses no right, and gets his costs for the needless vexation of the first suit. He clearly is not in a position to say that the mere bringing of the first action constitutes a defense to the second. There are also cases where a plaintiff has a right of action against two distinct parties like those cited on the argument (Morris v. Robinson, 3 Barn. & Cress., 196; Priestly v. Fernie, 3 Hurl. & Coltman, 977) as to which it is said he may discontinue a suit against the one and sue the other before judgment. But such cases really stand, not on the ground of

election, but on the ground of satisfaction—that it is only a satisfaction of the demand which operates to extinguish the cause of action and thereby preclude a second suit against another defendant. In England the doctrine is that a judgment recovered against one party is a thing of value, a constructive satisfaction, or that if the debt be not actually satisfied, it is at least merged and lost in the judgment. In this country the courts, following the reasoning of Story, have inclined generally to the doctrine that there must be an actual and not a theoretical satisfaction of the debt. But whatever the doctrine, all courts have agreed in such cases that it was not the election to bring an action against this or that defendant, but the satisfaction or merger of the debt which constitutes the defense.

4. But the present case belongs to a class where the plaintiff owes something to the party who has paid money to his agent; where he has a good action against his own agent, provided he ratifies his act, but where he has no action whatever against him unless he does ratify it. In such
30 cases two things generally, if not invariably, have been held: first, that the bringing of an action against the agent is a ratification of the payment to him; second, that a ratification once given is equivalent to an antecedent authority, and cannot be recalled. Though it be conceded that the power of attorney was utterly void; though it be assumed that no power of attorney was in existence, that none had ever been given; nevertheless, if the officer of the Treasury paid the claimants' money to their agent, and they ratified the act by bringing their action against him, it discharged the defendants as completely as if the claimants had stood by and directed the payment, or had subsequently received the money from him.

5. It is also manifest that the claimants' election to pursue the money in the hands of their agent, averring as they did that it was money paid to him for their use under and by virtue of their power of attorney, precluded the party who made the payment from suing the agent to recover it back; and it is manifest that their neglect to disavow the transaction, or to bring the present action until after the agent had become insolvent, operated to mislead the present defendants, and to prevent them from suing to recover back the money while it remained in the agent's hands. It was one of those cases where a party was bound to speak or forever hold his peace. It is true that there was no fraud on the part of the claimants, and that fraud is ordinarily an element of estoppel; but their gross carelessness in not disavowing the payment, and their long-continued neglect to put the defendants on their guard, and their silence, which operated to mislead the defendants and to prevent them from pursuing their remedy against the agent, constitute an estoppel which precludes the claimants from now asserting that the payment was made without due authority.

The judgment of the court is that the claimants' petition be dismissed.

31 V. *Final judgment of the court.*

At a Court of Claims held in the city of Washington, on the 7th day of June, 1880, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the petition of William Bailey, in his own right, Sarah Leetham, executrix, and Henry Cooper

Gleadow, executor of the last will and testament of William Leetham, deceased, and William Bailey as assignee, and the said Sarah Leetham and Henry Cooper Gleadow as such executrix and executor of the said William Leetham, assignee of the said William Leetham and of James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of John Leetham, deceased, claimants, be dismissed.

32 VI. *Application of claimants for and allowance of an appeal.*

From the judgment rendered in the above-entitled case on the 7th day of June, 1880, in favor of the defendants, the claimants, by their attorney, Nathaniel Wilson, on the third day of September, 1880, make application for and give notice of an appeal to the Supreme Court of the United States.

NATHANIEL WILSON,
*Att'y for Plaintiffs.*

Filed September 3, 1880.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
*Chief Justice.*

33 In the Court of Claims.

| | |
|---|---|
| WILLIAM BAILEY IN HIS OWN RIGHT, SARAH Leetham, executrix, and Henry Cooper Gleadow, executor of the last will and testament of William Leetham, deceased, and William Bailey as assignee, and the said Sarah Leetham and Henry Cooper Gleadow as such executrix and executor of the said William Leetham, assignee of the said William Leetham, and of James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of John Leetham, deceased, *versus* THE UNITED STATES | No. 11390. |

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimants for the allowance of an appeal to the Supreme Court of the United States and the allowance of same by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this first day of October, A. D. 1880.

[SEAL.] JOHN RANDOLPH,
*Ass't Clerk Court of Claims.*

(Indorsement on cover.) No. 86. William Bailey, in his own right, Sarah Leetham, executrix, & Henry Cooper Gleadow, executor of William Leetham, dec'd, and Wm. Bailey as assignee, &c., et al., appellants, vs. The United States. Court of Claims. Filed 11th October, 1880.

109-432

OFFICE SUPREME COURT U.S.
FILED
OCT 25 1883
JAMES H. McKENNEY, CLERK.

# Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 86.

WILLIAM BAILEY AND OTHERS, Appellants,

*vs.*

THE UNITED STATES.

Appeal from the Court of Claims.

## BRIEF FOR APPELLANTS.

J. HUBLEY ASHTON,
NATHANIEL WILSON,
*Of Counsel.*

THOMAS McGILL & CO., PRINTERS, WASHINGTON, D. C.

Gleadow, executor of the last will and testament of William Leetham, deceased, and William Bailey as assignee, and the said Sarah Leetham and Henry Cooper Gleadow as such executrix and executor of the said William Leetham, assignee of the said William Leetham and of James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of John Leetham, deceased, claimants, be dismissed.

32 VI. *Application of claimants for and allowance of an appeal.*

From the judgment rendered in the above-entitled case on the 7th day of June, 1880, in favor of the defendants, the claimants, by their attorney, Nathaniel Wilson, on the third day of September, 1880, make application for and give notice of an appeal to the Supreme Court of the United States.

NATHANIEL WILSON,
*Att'y for Plaintiffs.*

Filed September 3, 1880.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
*Chief Justice.*

33 In the Court of Claims.

| | |
|---|---|
| WILLIAM BAILEY IN HIS OWN RIGHT, SARAH Leetham, executrix, and Henry Cooper Gleadow, executor of the last will and testament of William Leetham, deceased, and William Bailey as assignee, and the said Sarah Leetham and Henry Cooper Gleadow as such executrix and executor of the said William Leetham, assignee of the said William Leetham, and of James Leetham, executors, and Elizabeth Leetham, executrix of the last will and testament of John Leetham, deceased,<br>*versus*<br>THE UNITED STATES | No. 11390. |

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimants for the allowance of an appeal to the Supreme Court of the United States and the allowance of same by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this first day of October, A. D. 1880.

[SEAL.] JOHN RANDOLPH,
*Ass't Clerk Court of Claims.*

(Indorsement on cover.) No. 86. William Bailey, in his own right, Sarah Leetham, executrix, & Henry Cooper Gleadow, executor of William Leetham, dec'd, and Wm. Bailey as assignee, &c., et al., appellants, vs. The United States. Court of Claims. Filed 11th October, 1880.

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# Supreme Court of the United States.

OCTOBER TERM, 1883.—No. 86.

WILLIAM BAILEY et al., Appellants,
vs.
THE UNITED STATES, Appellees.

## BRIEF FOR APPELLANTS.

### STATEMENT.

The claimants in this case are British subjects residing in England. They brought this suit to recover moneys appropriated by an Act of the Congress of the United States, approved July 7, 1870, entitled "An Act to carry into effect the decree of the District Court of the United States for the Southern District of New York, in the case of the British steamer Labuan."

That Act provided that "there be paid out of any money in the Treasury, not otherwise appropriated, to William Bailey, William Leetham, and John Leetham, of England, or their legal representatives, owners of the British steamer Labuan, $131,221.30, with interest from June 2, 1862, to the time of payment, and $5,000 without interest;" and declares that the moneys so appropriated "are due under the decree of the District Court of the Southern District of New York, pronounced March twenty-fifth, eighteen hundred and sixty-eight, on account of the illegal capture of the British steamer Labuan and her cargo by a cruiser of the United States."

16 Stats. at Large, p. 649.

In pursuance of said Act of Congress, on the 11th day of July, 1870, an account between the United States and the persons named in said Act was examined and adjusted by the First Auditor of the Treasury and admitted and certified by the Comptroller of the Treasury, wherein it was stated and admitted that the United States was indebted to William Bailey, William Leetham, and John Leetham—owners of said steamer—in the sum of $200,070.34. On the next day after the statement of the account, that is to say, on the 12th of July, 1870, a warrant was drawn for the payment of the account, and a draft was issued on the Treasurer of the United States for the amount due, payable to "Wm. Bailey, Wm. Leetham, and John Leetham, of England, owners, or their legal representatives."

On the same day, July 12, 1870, the draft was delivered and the proceeds thereof were paid to one A. E. Godeffroy.

Findings of fact, Record, p. 16.

The draft in question was delivered and the payment of the money therein described was made to Godeffroy, in pursuance of the directions given by the Comptroller of the Treasury, and endorsed on the back of the draft—and in pursuance of the endorsements on the draft made by Godeffroy, as attorney in fact, for William Bailey and William Leetham and the legal representatives of John Leetham.

Findings of fact, Record, p. 16.

The directions given by the Comptroller of the Treasury were based exclusively upon a power of attorney executed in England by William Bailey, William Leetham, and William Leetham and James Leetham, executors, and Elizabeth Leetham, executrix of John Leetham, deceased, made in favor of A. E. Godeffroy, and delivered on the 6th of February,

1869. Godeffroy had no other warrant or authority to demand or receive said moneys.

Findings of fact, Record, p. 17.

The money thus paid to Godeffroy and received by him was never accounted for or paid over, in whole or in part, to the persons named in the act of Congress, or to their legal representatives, or to any person authorized to receive the same on their behalf.

Findings of fact, paragraph X, Record, p. 19.

After the passage of the Act of Congress of July, 1870, and after the statement of the account and the issue of the draft referred to—that is to say, in August, 1870—demand was duly made on the United States by the duly authorized agents of the persons named in the act of Congress for the moneys payable to them—but payment thereof was refused.

Findings of fact, paragraph IX, Record, p. 19.

This action is brought by William Bailey, named in the act of Congress as one of the owners of the steamer, and who is, also, the survivor of the other owners, and by the legal representatives of the owners.

## Assignment of Errors.

The Court below erred—

I. In deciding that the demand of the claimants has been duly paid and discharged.

II. In dismissing the petition.

## ARGUMENT.

### First.

This is a claim founded upon a law of Congress, and also upon a contract with the Government of the United States; and it is, therefore, a claim within the ordinary jurisdiction of the Court of Claims, as defined by section 1059 of the Revised Statutes.

1. The law of Congress and the contract upon which the claim is based are contained in the Act passed on the 7th of July, 1870, for the purpose of carrying into effect the decree of the District Court of the United States, for the Southern District of New York, in the case of the British steamer "*Labuan*," illegally captured during the late war by a naval vessel of the United States, which declared that there was due, under that decree, on account of the illegal capture of that vessel, the sum of $131,221.30, with interest from June 2d, 1862, (presumably the date of the capture,) to the time of payment, and $5,000 without interest, and directing the payment of those sums to the owners of the vessel by the Treasury of the United States.

The payment directed and required by this Act to be made to the claimants, never having been made to them, by the United States, they have a right to the judgment of the Court of Claims for the moneys which the statute declared were due to them.

The consideration and the obligation which induced the enactment of this law and the appropriation of this money appear upon the face of the statute, and it is there disclosed that the Act was passed in pursuance and intended execution of the international duty which rested upon the Government of the United States, under the settled principles of the law of nations, to pay the foreign and neutral owners of the British steamer "*Labuan*" the damages and costs sustained by them in consequence of the unlawful capture

of their vessel by one of its cruisers, as adjudicated and adjudged by the final decree of its appropriate tribunal. The damages and loss suffered by the owners of that vessel at the hands of the naval authorities of the United States constituted the consideration for the Act, and upon its passage the Government of the United States became bound, by as high and sacred a contract as it ever made, to pay the claimants the amount appropriated by Congress.

2. The Act of July 7, 1870, upon which the present claim is founded, was not passed as a donation or gratuity, but for a valuable consideration, and when it became a law it vested in the parties a legal right to the money which it appropriated and directed to be paid to them. As the right claimed arises out of, and is founded upon, a law of Congress, the claim is brought clearly within the jurisdiction of the Court of Claims, under the decision in *Moore's case*, (4 C. Cl'ms R., 141,) and the recent decision of this Court in the case of *U. S.* v. *Kaufman*, (96 U. S. R., 569.)

The Act of Congress giving the claimant a legal right to the money appropriated created a legal obligation and a legal liability on the part of the United States to pay them that money, which are enforceable upon the ordinary footing of an implied contract, by suit in the Court of Claims, under the general principles of jurisprudence.

Under those principles, a contract or promise to pay money is always implied wherever there is a legal obligation to pay; as in the case of a judgment of a Court of record, which, being unsatisfied, (as Blackstone says,) "the law immediately *implies* that the defendant hath contracted a *debt*, and is bound to pay it;" and this implied agreement, he says, it is that gives the plaintiff a right to institute an action of debt to recover the judgment, which is an action upon a contract.

3 Comm., 160; Brown's case, 6 C. Cl'ms R., 177.

The case of *Moore* v. *U. S.*, above cited, was based on an Act of Congress granting compensation to the officers of

the Texan Navy for the loss of their positions by the annexation of that Republic. The compensation claimed by the petitioner, under the Act, being refused him by the government, he instituted suit in the Court of Claims to recover the money, and the Court held it had undoubted jurisdiction of the case as a claim founded on a law of Congress.

The question in *Kaufman's* case was, whether a sum of money ascertained to be due by the Commissioner of Internal Revenue, under the Act of Congress, as a refund on an internal revenue special tax stamp returned, was recoverable in the Court of Claims, as a claim founded on a law of Congress, or a contract, express or implied, with the United States.

The Chief Justice, in delivering the opinion of this Court, said: "The allowance of a claim by the Commissioner, under the authority of these statutes, raised an *implied promise*, on the part of the United States, to pay any amount that might already be due the claimant under such circumstances, and certainly such a claim would be founded upon a law of Congress. * * * No special remedy has been provided for the enforcement of the payment, and, consequently, the general laws which govern the Court of Claims may be resorted to for relief, if any can be found applicable to such a case. This is upon the principle that '*a liability created by statute without a remedy* may be enforced by an appropriate common law remedy.' *Pallard* vs. *Bailey*, 20 Wall., 527. And as against the Government there are no common law actions, any appropriate action, within the scope of the jurisdiction of the Court of Claims, may be resorted to, unless specially prohibited. Here the right has been given, and a liability founded upon a law of Congress created. Of such liabilities the Court of Claims has jurisdiction, and no other remedy has been provided."

SECOND.

The moneys appropriated and required to be paid to the claimants, by the Act of Congress of July 7, 1870, never having been paid to them, or their duly authorized agent, the liability arising upon the law, and the contract it imports, has not been discharged, and the United States are liable to the claimants for the moneys specified in the statute.

1. After the adjustment of an account between the United States and the persons named in the Act, on the 11th of July, 1870, a warrant was drawn on the next day directing the payment to them of the amount specified, upon which a draft, dated the 12th of July, was issued, payable "*to Wm. Bailey, Wm. Leetham, and John Leetham, owners, or their legal representatives, or order*, $200,070$\frac{3}{100}$." On this draft an endorsement was made by the Comptroller, directing its payment "*on the endorsement of A. E. Godeffroy, att'y in fact.*" This man, thereupon, endorsed the draft on the same day, the 12th of July, and got the money. The claimants have never received a dollar of it. (Record, pp. 16, 19.)

The money was paid to Godeffroy upon a power of attorney given to him in England, in February, 1869, long before the passage of the Act of Congress, by William Bailey, William Leetham, and the personal representatives of John Leetham; and which, of course, fulfilled none of the requirements of the Act of July 29, 1846, or the Act of February 26, 1853.

This power of attorney was *absolutely null and void;* and no payment under it to Godeffroy could bind the claimants, or discharge the debt.

This proposition must be deemed incontrovertibly true upon the plain and peremptory provisions of the acts referred to.

First let us consider the Act of July 29, 1846.

9 Stats., 41.

That Act absolutely *prohibited* the payment of any money upon a claim allowed by a resolution or act of Congress, "to any person or persons, other than the claimants, his or their executor or executors, administrator or administrators, unless such person or persons shall produce to the proper disbursing officer a warrant of attorney executed by such claimant or claimants, executor or executors, administrator or administrators, *after the enactment of the resolution or act allowing the claim.*"

And the Act went on to provide that "every such warrant of attorney shall refer to such resolution or act, and expressly recite the amount allowed thereby, and shall be attested by two competent witnesses, and acknowledged by the person or persons executing it, before an officer having authority to take the acknowledgments of deeds, who shall certify such acknowledgment; and it shall appear by such certificate that such officer, at the time of the making of such acknowledgment, read and fully explained such warrant of attorney to the person or persons acknowledging the same."

This Act not proving sufficiently effectual to protect the rights of persons in the situation of these claimants, and the interest of the Government, against the villainy of agents, Congress passed the act of February 26, 1853, which has recently been the subject of careful and extended consideration by this Court.

That Act provided as follows:

SEC. 1. That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof or interest therein, whether absolute or conditional,

and whatever may be the consideration therefor, *and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be* ABSOLUTELY NULL AND VOID, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

SEC. 7. That the provisions of this Act and of the Act of July 29, 1846, entitled "An Act in relation to the payment of claims," shall apply and extend to all claims against the United States, whether allowed by special Acts of Congress, or arising under general laws or treaties, or in any other manner whatever.

10 Stats., 170–1.

By the express provisions of the Statute, every power of attorney, order, or other authority for receiving payment of *any* claim, whether allowed by a resolution or Act of Congress, or otherwise, is rendered absolutely *null and void*, unless freely made and executed after the ascertainment of the amount due and the issuing of a warrant for the payment thereof.

Nothing could be more general, or more precise and peremptory, than this enactment.

It strikes down every power or warrant of attorney for the collection of *any* claim upon the United States, not freely made in conformity with its requirements, and deprived it of all legal efficacy whatever.

In *Cole's case*, Ch. J. CASEY, of the Court of Claims, said:

"The statute says that such an assignment of '*any claim*' shall be ABSOLUTELY NULL AND VOID. What right can a judge or a court have more than a secretary or a comptroller to say that it shall be valid? It is not the act of any particular officer or department, or tribunal in connection with the adjustment and payment of a claim, that is declared to be null and void. The act affects the as-

signment (so also the power of attorney) *itself* made in contravention of its provisions. It takes from it every vestige of virtue, the last spark of vitality, and leaves it totally defunct. No court, any more than an Executive department, can animate it, or breathe into it the breath of life. *The law says it shall be void; who can say it shall be valid?*"

3 C. Clms. R., 69.

The same court said, in *Cooper's case*, (1 Id., 87,) "It is useless to refine upon this provision, or attempt to fritter away the plain and explicit words used by Congress, when they say: *all transfers and assignments of any claim upon the United States.* We can only judge of what they intended by what they have said. And when they say that all assignments '*shall be absolutely null and void,*' unless made, &c., we must suppose they knew what they were doing, and meant what they said."

Still further, the Court said, in *Pierce's case*, (Ib., 289):

"The statute meets us at every turn with its inexorable announcement, that every authority to receive any part of such claim shall be *absolutely null and void.*

It is like the case of a usurious or gaming contract, which the law not only declares illegal, but avoids all securities given in execution of such contract. In such cases a note or bill given for the tainted consideration, even in the hands of a *bona fide* holder, for value before maturity, and without notice of the character of the instrument, is irrevocable and void. *There are no means by which the taint can be purged or vitality imparted to it. No Court can breathe into it the breath of life. The statute kills it, and it is dead once for all. For it there is no resurrection.*

The decisions and declarations in these cases, as to the extent of the operation and the effect of the Act of 1853, have been subjected to the test of judicial criticism and in this Court have been approved.

In *U. S.* vs. *Gillis*, (95 U. S. R., 414–415), the Court de-

clared that the Act of 1853 applied to all claims, whether presented to the Treasury or allowed by Act of Congress, and nullified all assignments and all powers of attorney, not conformable to the Act, of every such claim upon the United States, wherever set up. And speaking of the early decisions of this Court, Judge STRONG observes: "It was said with great force, 'the Act operates directly on the *claims themselves*, and not as limitations on, or definitions of, the powers of those who are to adjust them or adjudicate upon them.'" (p. 415.) And, finally he said: "We think, therefore, the Act of 1853 is of universal application, and covers all claims in every tribunal in which they may be asserted."

After this decision came the case of *Spofford* vs. *Kirk* (97 U. S. R., 489), which adjudged that an assignment in contravention of the Act was *good for nothing* even as between the assignor and assignee; and the same principle is, of course, applicable to a power of attorney for the collection of a claim upon the United States, not made in conformity with the Statute. The Act of 1853 deprived it of all validity—all vitality—as between the principal and the attorney; and, in effect, declared that it was to all legal intents, and for all legal purposes, whatever, as if it had never been made, so that it never could be asserted anywhere that it conferred any color of authority upon the person receiving it.

*Spofford* v. *Kirk* was a bill to enforce the payment of an order upon a fund collectible out of a claim upon the United States, and accepted by the attorneys of the claimant. After the issuing of the warrant the latter refused to recognize its validity, and hence the suit, which could only be maintained, if at all, upon the theory of an equitable assignment *pro tanto* of the claim.

The case was, therefore, *inter partes*, and required the Court to determine whether such an assignment of a claim upon the United States, made before the claim had been

allowed, and before the warrant had been issued, had any validity, either in law or in equity. The Court held it absolutely void, and that it conferred no rights on the assignee.

Mr. Justice STRONG, after quoting the Act, said:

"It would seem impossible to use language more comprehensive than this. It embraces alike legal and equitable assignments. It includes powers of attorney, orders, or other authorities for receiving payments of any such claim, or any part thereof. It strikes at every derivative interest in whatever form acquired, and incapacitates every claimant upon the Government from creating an interest in the claim in any other than himself.

It is hard to see how a transfer of a debt can be of no force as between the transferee and the debtor, and yet effective as between creditor and the assignee, to transmit an ownership of the debt or create a lien upon it. Yet if that might be—and we do not propose now to affirm or deny it—the question remains whether the Act of Congress was not intended to render all claims against the Government inalienable, alike in law and equity, for *every purpose and between all parties*. The intention of Congress must be discovered in the Act itself. What the frauds were against which it was intended to set up a guard, and how they might be perpetrated, nothing in the statute informs us. We can only infer from its provisions what the frauds and mischiefs had been or were apprehended which led to its enactment. It is enough that frauds or wrongs upon the Treasury were possible, and it may be that Congress intended to close the door against both. However that may be, the language of the Act is too sweeping and positive to justify us in giving it a limited construction. We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be *absolutely null and void*, that they are valid and effective as between the parties themselves, and only invalid when set up against the Government. It follows that, in our opinion, the accepted orders under which the appellant claims gave no interest in the claim of the drawer against the United States, and no interest in the fund arising out of the claim."

The same effect was given to the Statute by the Supreme Court of Minnesota, in *Becker* v. *Sweetzer* (10 Minn., 435), and it was there held that no action for moneys had and received to the use of the plaintiff could be maintained by an assignee against the claimant, where the latter had collected the claim from the Government, and upon the ground that the assignment was a *nullity* under the Act of 1853.

Every word of the decision in *Spofford* v. *Kirk* is as applicable to powers of attorney as to assignments; and the case, therefore, determines that the Act of 1853 was an Act of *general legislation*, intended to put the *sting of disability* into every power of attorney for receiving payment of any claim upon the United States, executed before the issuing of the warrant, and to destroy it at its very inception, so that its existence could never be asserted for any purpose whatever. The Act rendered every such power an absolute *nullity*. If the cases cited do not mean this they mean nothing. It was scarcely possible for the English tongue to give the Act more general application, or more universal and destructive effect, than the language used by Mr. Justice STRONG in the case of *Gillis* and that of *Spofford* v. *Kirk*. Under those cases no court has any right to treat the void power as subsisting for any purpose, or give any operation or effect whatever to it. The Act affects the assignment or power of attorney itself. It takes from it every vestige of virtue, the last spark of vitality, and leaves it totally defunct.

There are no means by which the taint can be purged or vitality imparted to it. No court can breathe into it the breath of life. The statute kills it, and it is dead once for all. For it there is no resurrection. The proposition that a warrant of attorney in contravention of the act is null and void, is founded thus on an express prohibition of *general law*, and by the universal rule of jurisprudence, therefore, a court of justice cannot recognize such an instrument

or give any force or effect to it, because the law of the land has interdicted it.

Since the decisions referred to there is no room, if there ever was any, for doubt that the Act of 1853 applied to all claims upon the United States, and not to those merely which were asserted in the first instance at the Treasury, and nullified absolutely not only powers of attorney for receiving payment of claims of this class, not made in conformity with the law, but also all such powers in relation to claims allowed by special act of Congress. Nor can it be doubted, under these cases, that the declaration in the Act of 1853 that every power of attorney, as well as every assignment, in contravention of its provisions, "*shall be absolutely null and void*," renders it impossible for such a power to have any legal effect for any purpose, anywhere, between any parties having relations to the claim with reference to which it was given, and not only warrants, but requires, every tribunal to treat such a power as ineffectual to confer any authority, or affect any rights, in respect to a claim upon the United States.

2. It follows necessarily from all this, that A. E. Godefroy, to whom the money of these parties was paid, was not authorized to receive it, and there was no warrant for its payment to him at the Treasury.

The money due, under the Act of 1870, having been thus paid to an unauthorized person, the claim was not extinguished, and the United States are liable for the amount to the claimants.

The doctrine is settled in the jurisprudence of this Court, that the principles of law which apply to the Government and to individuals, are for the most part the same.

No judicial decision can be needed to show that the payment of a claim or debt to an unauthorized person is *no* payment, and, therefore, *no* defense in bar of an action by the creditor for its recovery. The rule is axiomatic that

to enable a party to set up the defense of payment, the money must be paid to him to whom it is rightfully due, or to his properly constituted agent, and, that if made otherwise, the payment will not be good and obligatory upon the creditor, and he may recover the money from the debtor. (Story on Contracts, 5th Ed., Sec. 1340; Story on Agency, 8th Ed., Sec. 429; Bateman on Commercial Law, Sec. 513.)

The authorities all agree, also, that even though an agent be *expressly* authorized to receive payment, it does not follow that a payment made to him is, under all circumstances, good and obligatory on the principal, and such as operates to discharge the debt; for the general rule that payment to the agent is payment to the principal, is subject to the qualification, that such payment, in order to be valid and binding upon the principal, must be made in the ordinary and usual course of business; and to the further condition, that if the principal has notified the debtor beforehand that he requires payment to be made to himself, a payment to the agent will constitute no defense to an action by the principal against a third party for the money. (Story on Agency, Secs. 413, 429; Chitty on Contracts, 819; *Kayes* vs. *Brett*, 5 Exch., 274; *Favene* vs. *Bennett*, 11 East, 36; *Hornby* vs. *Lacy*, 6 M. and S., 166.)

The authorities, moreover, place a payment to an unauthorized person upon the same legal footing as a payment on a forged signature; and the rule is settled in regard to the latter, that forgery can confer no powers nor transfer any rights. (2 Parsons' Notes and Bills, 211; *Eaves* vs. *People's Savings Bank*, 25 Conn., 232; *Morgan* vs. *The Bank*, 1 Duer, 434.)

Thus, in the case above cited from 25 Connecticut, a savings bank paid money on a forged order to a person who brought with him the depositor's bank-book, which was stolen. It was held that the payment was no defense to a suit by the depositor for the money. ELLSWORTH, Justice,

said: "The plaintiff having deposited with the defendants the money demanded, it would seem too clear to need judicial decision that the plaintiff, or his duly constituted attorney, can alone obtain its payment. It is said that defendants are mere bailees of the money. Suppose this were so, it could not help the defendants; for it would be no excuse for paying the money to an *unauthorized person*; and one with a *forged authority is no better*."

So the Court of Claims, in *Morrell's case*, (7 C. Clms. R., 422,) gave judgment against the United States for the amount of certain bonds of the Republic of Texas which had been paid at the Treasury to a person not entitled, upon a forged indorsement of the name of the payee, rightly holding that such payment was no satisfaction of the indebtedness.

It has been sometimes suggested whether a *bona fide* payment of commercial paper to one who holds it by a forgery should not operate as a discharge. But even in respect to that favored class of instruments the rule of decision has always been that payment to one whose right to receive depends on a forgery, does not discharge the debt. He is simply an unauthorized person; and the rule already stated, that payment to an unauthorized person is *no* payment, is one of universal application in the jurisprudence of the country.

Upon these grounds we maintain that the payment of this money to A. E. Godeffroy was no payment which the law regards effectual to discharge the debt to these foreign claimants. It was paid upon an instrument which was absolutely *null and void* for any such purpose by an express provision of the general law of the United States, in violation of the settled usage, and, therefore, not in the ordinary course of the business of the Department, and in defiance of an express command that the money should be paid only to the parties who were entitled to it under the statute.

THIRD.

The foregoing considerations apply to all the grounds of defense urged on behalf of the United States and adopted in the opinion of the Court below, except the defenses which are supposed to have been created by the acts of the claimants after payment was made to Godeffroy.

The Act of Congress for the relief of the claimant was approved July 7, 1870. Within four days thereafter an account had been passed upon by the various bureaus of the Treasury Department, and on the following day, July 12, 1870, the warrant was issued and the money actually paid to Godeffroy.

A month afterwards, that is to say, in August, 1870, the attorney for the claimants, with a power of attorney executed after the approval of the Act of Congress, presented himself at the Treasury Department and made due demand for payment of the money appropriated. Payment was refused, because payment had already been made to Godeffroy.

Subsequently, in May, 1871, the claimants instituted a suit against Godeffroy in New York to recover the moneys so paid him under the power of attorney, dated February 6, 1869.

This suit was not prosecuted to judgment, but was discontinued on the 28th of February, 1879.

Findings of fact, Record, p. 20.

It was held by the Court of Claims that this conduct of the claimants released the Government from all liability, and constituted a ratification of the act of their agent.

It was also held that the institution of the suit was an election, and that fact, together with their long-continued neglect to put the defendants on their guard, constitute an

estoppel which precludes the claimant from now asserting that the payment was made without due authority.

To these views our reply is:

I.

The claimants cannot be affected with any responsibility for the illegal payment of this money at the Treasury to Godeffroy, and are not chargeable with any wrong or fault in connection with that transaction, and the United States are, and should be held, solely and exclusively responsible in law for the payment of the money to that person, and its consequent loss to the claimants.

1. The fallacy of the argument on the other side consists in sedulously ignoring the character and relations of the claimants, who were British subjects, resident in their own country, and who knew nothing, and were not bound to know anything, of the Acts of Congress of July 29, 1846, and February 26, 1853.

The defense proceeds upon the idea that the claimants participated in the violation of law committed in the payment of this money to Godeffroy, and that the maxim, *in pari delicto potior est conditio defendentis*, furnishes the rule of decision in the case.

If there was no *delictum* on the part of the claimants, there was no *par delictum* on their part, and the rule expressly requires equal wrong in order that the law should leave the parties where it finds them. "The maxim does not apply unless both the litigating parties are in *delicto;* it cannot be insisted upon as a defense, either by or against an innocent party." (Broom's Legal Maxims, 724.)

No *delictum*, fault, or blame could be imputable to the claimants under any circumstances, in this transaction, unless they had actual knowledge of the Acts of Congress which discredited and invalidated the power of attorney

given to Godeffroy, and such knowledge on their part has not been shown by the Government.

The principle is settled in our jurisprudence that no one is *presumed to know the law of a foreign country.* The maxim, *ignorantia legis neminem excusat*, applies only to citizens. It has no application to foreigners. The law is presumed to be known *only* by the persons *subject* to it. Hence it is that a mistake in regard to the law of a foreign country or State is treated in courts of equity, like any other mistake of *fact*, as proper ground of equitable relief. (1 Story Eq. Juris., sec. 140.)

This subject was elaborately discussed in the celebrated case of *Haven* v. *Foster*, 9 Pick., 112.

It was there held that ignorance of law signifies ignorance of the law of one's own country; that ignorance of the law of a foreign Government is ignorance of fact; and that money paid by mistake through ignorance of the law of another of the United States, may be recovered back. Morton, J., said:

"*It was not the duty of the plaintiff to know the laws of New York, nor does ignorance of them imply negligence.*" (9 Pick., 121.)

The case of *Leslie* v. *Baillie*, (2 Younge & Collier Ch. Cases, 91,) is of interest on this point.

A testator who died and whose will was proved in England, bequeathed a legacy to a married woman, whose domicil, as well as that of her husband, was in Scotland. After the decease of the husband, the executors paid the legacy to the widow. It was proved that according to the Scotch law the payment should have been made to the husband's personal representatives. *Held*, that *in the absence of proof that the executors knew the Scotch law on the subject*, the payment to the widow was a good payment.

The common law of a foreign country may be proved by intelligent and respectable witnesses, but foreign *statutes*

cannot be proved by parol. (Kenney *v.* Clarkson, 1 John., 385; Frith *v.* Sprague, 14 Mass., 455; McCormick *v.* Garnett, 5 De Gex, M. & G., 278.)

If a foreign court cannot take cognizance of the statute law of the United States without the requisite legal proof, the presumption, of course, is that the *subjects* of a foreign statute are ignorant of our statute law.

In excusing foreigners for ignorance of the law to which they are not subject, our law places them upon the same general footing on which the civil law placed minors, soldiers, women, and rustics.

Vinnius, in his *Aditus ad Jurisprudentiam*, says:

"Ignorance of law aids no one. But here there is a difference. In criminal matters, such ignorance is of no avail in mitigation of a penalty, unless it be in the case of a person of unsound mind and children under twelve years of age. But if any act be done in ignorance of the law purely civil, (for the reason does not apply to laws of nature, which, being implanted in the breast of every one, ignorance of them is inexcusable,) such ignorance protects those persons to whom ignorance of law is permitted, *viz.*, women and minors. *Regula est, juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere. Videamus igitur, &c.* Paulus Dig., XXII, 6 fr., 9 pr.

"In matters of contract, again, ignorance of law cannot benefit a person (not a minor or soldier) who seeks to make an acquisition. If, however, a loss is sought to be avoided, then a distinction must be taken between a loss incurred and a loss not yet sustained. If the loss sought to be avoided be of the former kind, ignorance of law cannot be vouched in aid, except by minors, soldiers, women, and rustics; whilst if the loss be of the latter description, such ignorance is never damnatory." (Vinnius, Aditus ad Jurisp., c. v.)

We now cite a case, from our own authorities, where a mutual mistake of law, by parties equally subject to the law, was held to require a repayment of the money paid under such a mistake by a party who was under obligation not to commit such an error.

In *Davis* v. *Bagley*, (40 Georgia, 181,) it was held, that where an administrator paid out money belonging to a mother and children, to the mother alone, on a mutual mistake as to the law, the administrator was liable to account to her, although she stood by and, in her own ignorance, permitted him to go wrong. This was in the case of parties both of whom knew, or were presumed to know, the law; but the case was decided on the ground that the administrator acted upon his own responsibility in paying out the money. The Court said:

"It was not Mrs. Davis's duty to instruct Bagley as to the law. It was Bagley's duty to obey the law. He was the actor, sworn and bonded, authorized to take counsel and charge the estate for it; and we can see no reason for excusing him from the performance of his duty because Mrs. Davis, who was not bound to set him right, stood by and, in her own ignorance, permitted him to go wrong."

The words of this opinion might be applied, with great force and propriety, to the transaction now under consideration in the present case.

It was the duty of the Government to obey the Act of 1853, and to protect these foreign claimants against the consequences of their own ignorance; and there can be no reason for excusing it from the performance of its duty to them, because the claimants, without knowledge of its statutes, gave a power of attorney, which those statutes declared void, to the man who received the money.

As the claimants had no knowledge of the Acts of Congress, there was no fault, wrong, or negligence on their part in intrusting Godeffroy with their power of attorney, and the whole blame, in the transaction of the payment of this money to him at the Treasury, is therefore imputable to the Government, and the Government is solely responsible for the consequence of his infidelity. The Treasury Department was bound to assume that the claimants, the creditors of the Government, had no knowledge of the

existence of the Acts of 1846 and 1853, and it was its duty to protect them, as non-resident aliens, against the consequences of their own ignorance of a material fact, and to comply with the law, which declared the power of attorney "*absolutely null and void*," by refusing to recognize it as conferring any authority upon Godeffroy, and by notifying the claimants that, under the law of the United States, the money could only be drawn by themselves, or under a power advisedly made after it was ready to be paid at the Treasury.

Under the law of the country, the power held by Godeffroy was absolutely worthless for the purpose for which he presented it at the Treasury. *The Government knew that fact. The claimants were in ignorance of it, and could not be presumed to know it.* And when the Government concluded to depart from the law, it deliberately, in the light of knowledge, undertook the risk of what actually occurred, and cannot justly complain of being made to bear the loss.

2. The view thus presented takes this case entirely out of the scope and reach of the decision in the case of *McKnight* v. *United States*, (98 U. S. R., 186.) The parties there were citizens of the United States, who knew, and were bound to know, the law of the country.

The decision in that case, on other grounds also, is not applicable to this.

The money, in that case, by the payment to the assignees, received the precise destination which all the parties intended. The assignees had a valid claim against Hart. The money was received by them in payment of Hart's debt, and discharged it to that extent. The case, therefore, was as if the Government had paid the money to Hart, and he had paid it to the assignees. It made no difference to Hart, *who never complained*, that the money was paid directly to his creditors.

If the United States had recovered the money back from

the assignees, they would have been obliged to pay it to Hart, and he (Hart) would have been obliged to pay it to the assignees. By the direct payment to the assignees, it received, therefore, the precise destination which Hart desired it should have. It was in law paid to Hart, the creditor and assignor, who gave the Government a receipt for the money, and by that receipt, as the Supreme Court said, he was estopped from setting up any claim against the Government. "*The facts were all known.*" That was not the case here. The great fact, in this case, that the law of the United States invalidated the power to Godeffroy, was *not* known to the present claimants, but was known to the Government, and was not communicated to the claimants. Hence, it cannot be said here, as was said in *McKnight's* case, that "there was no indirection, *concealment*, or improper purpose on either side."

II.

But it is said that the claimants have ratified and adopted the act of Godeffroy, and that such ratification is the legal equivalent of a power of attorney duly executed between the 5th and 12th July, 1870. But it must be apparent that, under such a statute as the Act of 1853, the doctrines of the law of agency, in regard to *ratification*, which are relied on, can have no application to the case.

1. It would seem too clear for argument, that if the original authority given to Godeffroy, by the power of attorney presented by him at the Treasury, was "null and void," a subsequent assent, by parol or otherwise, to his act in collecting the money, could not cure the defect of the original authority. The maxim is, "*omnis ratihabitio retrotrahitur et mandato priori æquiparatur.*" But here there was a prior, but invalid and void, authority; and a subse-

quent so-called ratification could not, in this respect, stand upon a higher ground than the original authority.

In addition to this, several other observations may be made upon this subject of the supposed ratification of the acts of Godeffroy, by the institution of a suit against him in New York.

In the first place, the argument on the other side ignores the well-settled distinction between the ratification of acts which are void, or which are illegal, or against public policy, and the ratification of acts which are voidable. In the former case the ratification is inoperative for any purpose whatsoever, since "the same noxious qualities adhere to the ratification as existed in the original transaction, and, therefore, the maxim may well be applied: *Quod ab initio non valet, tractu temporis non convalescit.*" (Story on Agency, secs. 240, 241.)

In *Brook* v. *Hook*, (L. R., 6 Ex., 89,) the plaintiff was the payee of a note to which the defendant's name as maker had been forged. The defendant, after the making and before the maturity of the note, gave the plaintiff a writing, by which he purported to hold himself responsible. The Court held that the forgery could not be ratified.

Again, it is well settled, that if the adoption of any particular form or mode is necessary to confer the authority, in the *first* instance, there can be no valid *ratification* except in the same manner.

It is a settled rule, on the ground that a ratification operates as equivalent to a previous authority, that where the adoption of any particular form or mode is necessary to confer the authority, in the first instance, there can be no valid ratification except in the same manner; and thus, as an authority to execute deeds must be under seal, there cannot be a parol ratification of a deed executed without authority under seal; and where the vote of a corporation is necessary to authorize an agent to convey by deed, a

ratification of such a conveyance must be by vote. This rule is applicable to express ratifications, and also to ratification by such acts of recognition and acquiescence as operate as evidences of assent. (Story on Agency, sec. 242; Wharton on Agency, sec. 83; Blood *v.* Goodrich, 9 Wend., 68; Dispatch Line *v.* Bellamy Manuf. Co., 12 N. H., 231; Grove *v.* Hodges, 55 Penn., 504.)

In *Grove* v. *Hodges* a deed was set up, executed by an agent. Strong, J., said: "No *sealed* authority is shown for McHughes' action, nor is Irwin shown to have adopted the seal which was affixed, or to have *ratified* the sealing by any *sealed instrument*, though there is evidence that he accepted the contract as made. *It must be taken, therefore, that the deed is not a deed of Irwin.*"

Here the Act of 1853 required a particular form and mode to confer the authority on the agent to collect the money. It is impossible, therefore, to see how a subsequent parol acknowledgment and ratification can affect the rights and liabilities of the parties to the transaction.

Undoubtedly, generally, with respect to acts which require no *particular* form or mode in order to confer authority to do them, it is immaterial whether the authority be given *prior or subsequent* to the act. The principle of ratification is that a subsequent assent to an assumed agency is equivalent to a previous authority. But if the authority is required by law to be given before the act is done, and in a particular form or mode, then manifestly a subsequent assent, in a different mode, cannot be equivalent to a previous authority. Thus, in the case of a tenant from year to year, who has, by law, a right to a half year's notice to quit, if such notice be given by an agent without the authority of the landlord, the tenant is not bound by it. (Brown *v.* Denman, 2 Exc., 167.)

2. It is equally manifest that the institution of the suit against Godeffroy cannot raise an estoppel, precluding the

claimants from denying that the money was rightfully collected, for it is abundantly clear that claimants derived no benefit or advantage whatever from that suit, nor was the Government in any way injured or prejudiced by its institution.

It neither benefited the claimants nor harmed the Government; and, therefore, there is no basis in the matter for any equitable estoppel against the claimants from calling in question here the legality of the payment made to him.

3. Nor is it to be inferred, from anything in the case, that the claimants *intended* to acquiesce in the validity of the payment of this money to Godeffroy, by suing him for the money; and it is equally impossible to say, as already observed, that the Government relied in any manner upon that suit to its prejudice. Acts of ratification, to be sufficient, must be something by which the party, by relying on them, has been *prejudiced*. (Harris *v.* Miner, 28 Ill., 135.)

In the great case of *Taylor* v. *Plumer*, (3 M. & Selw., 562,) the doctrine is established that the owner is entitled to pursue his property, in whosoever hands he may find it, and into whatever other form it may have been converted.

And in *Hunter* v. *Prinsep*, (10 East, 378, 394,) the question distinctly arose whether an action of *assumpsit* by the owner of a cargo against the owner of the ship for the proceeds remitted to the latter by the master, upon an illegal sale of the cargo, so *affirmed the master's act in selling the goods* as to entitle the defendant to retain for the freight *pro rata itineris*. Lord Ellenborough held that it did not, and that the only effect of this form of action was to waive any complaint, with a view to damages, of the tortious act by which the goods were converted into money, and to confine the plaintiff's right to a recovery of the net proceeds of the sale.

So, in the present case, the claimants, by the suit against Godeffroy, did not affirm, or intend to affirm, that the payment of this money had been legally or rightfully made to him, at the Treasury, under the old power of attorney held by him, or that the debt to them, under the act of 1870, was discharged and satisfied by that payment; and consequently they did not ratify and confirm, or intend to ratify and confirm, the transaction between him and the Government, by which the money, appropriated by the Act of 1870, got into his possession.

The simple fact was that the money *had* been paid to him by the Government, under an instrument which the United States had themselves declared to be "*absolutely null and void*," for the purpose for which it was presented at the Treasury. By suing Godeffroy for the money paid into his hands wrongfully by the Government, the claimants did not affirm that the money had been rightfully paid to him, or that he was legally authorized to receive the money, and unless it was so paid to him, and he was so authorized to receive the money, the obligation and the debt created by the Act of 1870 were not satisfied and discharged.

The argument in the case of *Hunter* v. *Prinsep* (*supra*) was, that by suing the owners of the vessel for the proceeds of the sale of the cargo, which was illegally made by the master, the owners of the cargo ratified and confirmed the act of the master in disposing of the cargo. But the Court said this was not to be taken to be the legal effect of the action against the owners of the vessel for the proceeds of the cargo, and that the owners of the vessel could not so treat it in defending against the claim of the owners of the cargo for its proceeds.

The principle of that decision is entirely applicable here. The money which ought to have been paid to the claimants had wrongfully got into the hands of Godeffroy, and the claimants could sue to recover it without affirming that it

had been rightfully paid to him, or that the debt, as between them and the United States, had been discharged by that payment.

III.

The last general theory of the defense in this case is, that by the institution of the suit against Godeffroy the claimants "made their *election* between two utterly inconsistent courses of action, and must be confined to that which they first adopted." And the question thus presented is, whether or not the naked fact of the institution of that suit is in law a technical *bar* to the prosecution of the present suit in this Court, under any of the recognized doctrines of jurisprudence in regard to the election of actions? We submit it is not.

1. In the first place, it is to be observed that the question presented does not require us to consider whether, if the suit against Godeffroy had been prosecuted to *judgment*, the remedy against the United States would or would not have been extinguished. The argument would be plausible, at least, that after actual recovery of the money paid to him, by judgment, the claimants could not go against the United States for the debt, which they maintain was not discharged by the payment to Godeffroy. But the view that, by simply *instituting a suit* against that person, the claimants' recourse against the United States was extinguished, is scarcely plausible, and is not supported by any authority cited on the other side.

The ground which we have presented, in support of the present action, is that, although this money was paid out at the Treasury to Godeffroy, the payment did not affect the debt, because it was made to a person who was not legally authorized to receive it. It was as if payment had been made upon a forged power of attorney, or upon a power which had been revoked, or to a person falsely per-

sonating the claimants, or their duly-authorized attorney. For all legal purposes, the power held by Godeffroy was *no* power, because it was so declared by the law of the United States, which they knew, and the claimants did not know. The question whether the institution of the suit against Godeffroy is a *bar* to the present suit, is a question whether or not a debt has been discharged and extinguished by that act on the part of the claimants; for if the claimants are denied the present redress, it must be upon the ground that, in some way, or by some means or other, the debt created by the Act of 1870 has been actually or legally discharged; and the present position of the Government is that it *has been* discharged, although never paid to the creditors, by the simple fact that the money paid was demanded by suit from Godeffroy. So that the Court will have now to consider whether there is any principle or rule of law which requires it to say that the claimants are precluded from alleging that the debt on the part of the United States has *not* been paid, by the fact that they demanded the money received by Godeffroy, and did not at once, and without demanding the money from him, pursue their remedy against the United States.

We respectfully submit that the principles of law as to the election of actions do not support the view on the other side, that the debt, as between the United States and these claimants, is to be deemed discharged and extinguished by this action against Godeffroy, or that they are estopped from denying that their claim against the United States is not satisfied, by the bare fact that they sued Godeffroy for the money which came into his hands in July, 1870.

2. The subject of *Election* is commonly treated as a branch or department of the law of *Estoppel*, and the cases

usually refer to the doctrines of equitable estoppel as furnishing the criteria for determining whether there has been such an election of one course of proceeding as concludes the party, and precludes him from adopting and pursuing another course inconsistent with the first. Indeed, if the institution of the suit against Godeffroy is not a bar to the present suit, as we have shown it is not, on the ground that it was a legal and effectual *ratification* of his act in collecting this money, it could be held to be a bar only on one other ground, viz., that it operated as an *estoppel*, by deceiving the United States, or inducing them to alter their position, which it cannot be pretended was the case.

Judge Story says:

"This doctrine of estoppel *in pais* is based upon a fraudulent purpose and a fraudulent result. If, therefore, the element of fraud is wanting there is no estoppel. As if both parties were equally connusant of the facts, and the declaration or silence of one party produced no change in the conduct of the other, he acting solely upon his own judgment. *There must be deception and change of conduct in consequence in order to estop the party from showing the truth.*" (Eq. Jurisp., sec. 1543.)

And the language of the Supreme Court is equally explicit.

In the case of *Henshaw* v. *Bissell*, (18 Wall., 271,) Mr. Justice Field said:

"For the application of the doctrine of equitable estoppel, there must be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud. An estoppel *in pais* is sometimes said to be a moral question. Certain it is that to the enforcement of an estoppel of this character, such as will prevent a party from asserting his legal rights to property, there must generally be some degree of turpitude in his conduct which has misled others to their injury. Conduct or declarations founded upon ignorance of one's rights have no such ingredient, and seldom work any such result."

Now, it would be absurd to say that there was any "degree of turpitude in the conduct of the claimants, which misled the United States to their injury, in bringing suit against Godeffroy. There was no fraudulent purpose and no fraudulent result, so far as that matter was concerned. The Government was not deceived, and did not change its position, in any manner, in consequence of the suit. There was in fact nothing in that act of the claimants on which any estoppel can be raised, under the settled doctrines of the law.

We are at liberty to say, therefore, that upon the general principles governing the subject of estoppel *in pais*, the demanding of this money from Godeffroy cannot preclude them from asserting that the debt was not paid by the United States.

3. The cases cited by the learned counsel for the United States on the argument are all cases within the well-defined rules as to estoppels *in pais*, or ratification, by assent, where subsequent assent was capable of working as a legal ratification; or cases in which it has been held that a man cannot at once be treated as a tenant and a trespasser; or that the acts of the same party cannot be affirmed in part and avoided as to the rest,—those adopted which are for the benefit of the plaintiff, and the rest rejected; or that a party cannot, after affirming the acts of another, by accepting the benefit of them, treat him as a wrong-doer; or cases having less, or as little, bearing on the point in controversy in the present suit.

The doctrine of those cases we do not dispute, but it does not cover *this* case.

This is a case of two suits against *different* parties for different causes of actions, one of which suits was dismissed and in which the fact of the institution of the discontinued suit is sought to be set up as a flat *bar* to the prosecution of the pending suit.

In such a case it is manifest that the first and dismissed suit ought not to be allowed to be a *bar* to the subsequent prosecution of another against a different party, even though the grounds of the two suits be entirely inconsistent, unless the institution of the first suit worked an equitable estoppel on the ground on which, under the authorities above cited, such an estoppel is enforced.

That ground is, as has been seen, *fraud*. There must be a fraudulent purpose and a fraudulent result; there must be deception and change of conduct in consequence, in order to estop the party from showing the truth; there must be some degree of turpitude which has misled others to their injury. And, as we have said, nothing of the kind can be pretended here, in regard to the institution of the suit against Godeffroy.

4. The pertinent authorities are entirely in accord with this view of the matter.

Thus, in the case of two suits against the *same* person, upon apparently inconsistent grounds, it was held that the discontinuance of the first suit, before judgment, enabled the party to prosecute his second suit, without impediment. And manifestly, on the ground that to deny a plaintiff the redress to which he is entitled, because he had recourse in the first instance to a different remedy, although inconsistent, would be the height of injustice.

The case referred to is *Peters* v. *Ballestier*, (3 Pick., 495,) where the master of a vessel had exceeded the authority which had been given him to sell the cargo, by disposing of it in payment of an antecedent debt, due by the owner to the vendee. An action of *assumpsit* was subsequently brought against the latter by a party claiming as assignee of the bill of lading, which was *discontinued*, and an action of *trover* resorted to instead.

It was argued for the defense, that even if the plaintiff were originally entitled to set aside the sale, under which

defendant claimed, yet that it had been *affirmed* by the nature of the action first brought, and that the election thus made could not afterwards be departed from. But it was held by the Court, that as the plaintiffs had not proceeded with the action of assumpsit, but had *discontinued* that suit, they were not debarred from prosecuting their action of trover.

The principle of the decision in *Morris* v. *Robinson*, (3 Barn. & Cress., 196,) also covers the present case. The master of a ship, abandoned ship and cargo at the *Mauritius*, and they were sold under an order of the Vice Admiralty Court there, and proceeds paid into Court. The cargo was not damaged, or perishable, nor was there any pressing necessity for the sale of it. The owners of the cargo brought an action of *assumpsit* for money had and received, against the purchaser of the goods. They had previously brought an action on the *case*, and trover, against the owners of the ship, for wrongfully selling the cargo, instead of carrying it to London, and recovered a general verdict for the value of the ship and freight, which was one-fifth the value of the cargo. They had also previously sent out a power of attorney to an agent at the *Mauritius* to procure the proceeds of the sale. The agent demanded them, but they had been previously remitted to the High Court of Admiralty in England.

The Court of King's Bench decided (1) that the recovery against the owners of the ship was no answer to the action; (2) that by demanding the proceeds of the sale at *Mauritius*, the plaintiffs did not ratify the sale; that the proceeds not having been paid when demanded, the plaintiffs were in the same situation as if no such demand had been made, and, therefore, entitled to recover the value of the goods from the defendant.

Opinions were delivered by Bayley, Holroyd, and Littledale, JJ. The latter said:

"As to the recovery, in the former action: in the first place, there has been no judgment in that case; and if one party attempts to avail himself of the technical effect of such a recovery, the other may set up a technical answer, viz., that the judgment has not been entered up. But an action of trover is clearly no bar, unless the full value has been recovered. Here the verdict amounted to little more than one-fifth. The justice of the case then is, that the plaintiffs should be allowed to recover the residue. The power of attorney merely amounted to this: the plaintiffs were willing to waive the tort, and take the money lodged in the Vice Admiralty Court; but they could not procure it. Surely that ought to bar their claim on those who had the goods."

The case of *Priestley* v. *Fernie*, (3 Hurlstone & Coltman, 977,) is further authority for the position we take here, that the claimants had the right, after discontinuing the suit against Godeffroy, to proceed against the Government. That was an action against the owner of a ship, upon a bill of lading, after *judgment* had been obtained, and execution issued, against the master on the same bill. It was held that the bringing of an action was of itself no election to sue the agent, though the suing to judgment was such an election. *Bramwell*, B., said: "If this were an ordinary case of principal and agent, where the agent, having made a contract in his own name, has been sued on it to judgment, there can be no doubt that no second action would be maintainable against the principal. The very expression that where a contract is so made the contractee has an *election* to sue agent, or principal, supposes he can only sue one of them; that is to say, *sue to judgment*." And the Court held that an action against one might be discontinued, and fresh proceedings be well taken against the other.

Judge Story, in his work on Agency, had said that "our law, while it gives an election to the creditor to sue either the master or the owner, in a distinct and separate action,

does not preclude the creditor by such an election from maintaining another action against the party not sued, unless, in the first action, he has obtained a complete satisfaction of the claim." (Story on Agency, sec. 295.)

Mr. Wharton is of opinion that the mere taking judgment against the agent should not, when the judgment is unsatisfied, extinguish the debt. But he admits that *Priestley* v. *Fernie* holds that suing to judgment, and that *only*, is a binding election, under the technical rules of the common law, to deal with the agent as alone liable. (Wharton on Agency, sec. 473.)

In view of these principles and authorities, we submit that if the technical doctrine of election were applicable at all to such a case as this, there could be no election by *merely bringing suit* against Godeffroy; that nothing short of *suing him to judgment* could be deemed, under any circumstances, an election to hold him, and discharge the United States, which would be final and conclusive on the claimants; and that the fact of the institution of that suit cannot consequently be pleaded by the United States as a bar to the prosecution of the present suit.

J. Hubley Ashton,
Nath'l Wilson,
*Of Counsel for Appellants.*

107-432

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# In the Supreme Court of the United States.

OCTOBER TERM, 1883.

BAILEY, &c.,
*vs.*
THE UNITED STATES. } No. 86.

BRIEF FOR THE UNITED STATES.

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## BRIEF FOR THE UNITED STATES.

The record shows that in consequence of the capture during the late war of the British steamer Labuan, Bailey and others, as owners, obtained a decree for $131,221, with interest, &c., in the district court for Southern New York, at March, 1868; and that in consequence, on the 7th of July, 1870, an act was passed carrying into effect that decree, and ordering the money to be paid to such owners, "*or their legal representatives.*"

Accordingly, a Treasury warrant was made out for $200,070.34 in favor of Bailey, &c., "*or their legal representatives or order,*" dated July 12, 1870. The proceeds of this were paid in August, 1870, to one Godeffroy, as attorney in fact of Bailey, &c., his only authority to act as such being under a power of attorney executed February 6th, 1869.

In May, 1871, the present claimants, the owners aforesaid, brought suit against Godeffroy to recover the above money, alleging that it had been received by him *under the power of attorney aforesaid,* and that they had *duly demanded* the same. That suit was dismissed by consent in February, 1879.

The petition in the present suit was filed May 13, 1876, and was *traversed* July 14, 1876. It was dismissed before June 7, 1880.

Upon behalf of the Government it is submitted that the claimants are bound by Godeffroy's receipt:

1. Because of their ratification thereof by the suit brought against him nine months afterward, as having been their agent in receiving such money; and

2. Because the special language of the act of 1870 to enforce the decree justified such payment *ab origine.*

1. The first point is well maintained in the opinion of

the learned court below, which I beg leave to adopt as part of this brief, p. 23, &c.

2. I submit further that Congress, in adding the phrase "*or their legal representatives*" after the names of those to whom in the first instance the money was to be paid, acted *ex industria*, and intended that "*representatives*" as defined by general law, and exclusive of extraordinary rules of administration, might transact that particular business with the Treasury.

This is a matter of legal interpretation, and therefore is not affected by the tenth finding of fact. (P. 19.)

It also goes to *support* the judgment below, and is therefore a matter competent to be suggested here by the Government.

In support of this contention I submit that *the context made by the legislation of Congress upon like matters at the session of* 1870 *shows that the word "representatives" was used in this act in a special sense, and not as including merely executors, &c., or attorneys appointed in the ordinary limited way, viz, after warrant drawn, &c.*

(*a.*) That expression was superfluous if intended to include only executors, &c., and attorneys created after warrant drawn; and Congress shows its *advertency* to this principle at the same session by uniformly omitting it in all cases of private acts giving money out of the Treasury to citizens of the United States. Such acts give sums of money mentioned therein to *Paine* and to *Parrott* and *Kelley* and *Price* and *Clinton*, and others, without more said. Clearly, however, in such case the money would be payable at the Treasury to their executors, &c., and to their attorneys duly authorized after warrant. There are twenty such acts at that session: 16 Stat., pp. 613, 632, 633, 634, 635, 636, 639, 640, 642, 645, 652, 654, 656, 657, and 658, dating from February 12 to July 15, 1870. They are all for the payment from the Treasury of a specified sum of money, and all appear to be in favor of *citizens*.

Besides these there are *five* acts at the same session for the payment of specified sums to *foreigners*, sums due in each case under *decrees*. One of these is in favor of a subject of *Spain* (p. 649); the next (s. p.) is the act now under consideration, in favor of subjects of *England* and of *Mexico*; the *third* (p. 650) is in favor of parties interested in an *English* schooner; the *fourth* (s. p.) in favor of parties interested in a *British* brig and in a *British* bark; and the *fifth* (p. 651) in favor of parties interested in another *British* brig. *These all add to the persons otherwise described the words "or their legal representatives."*

I submit, therefore, that the word "representatives"

was used by Congress to indicate to the officers of the Treasury that the question as to " representatives " should be decided according to general rules governing international commerce.

And consequently that the contemporaneous decision to that effect by Comptroller Taylor endorsed upon the warrant (p. 7, middle) was correct.

The exact sum due to the claimants had previously to the execution of the power of attorney been exactly ascertained by a solemn decree of a United States court, so that the policy of Revised Statutes, 3477, had but little application as between principals and attorney, and still less as between the United States and the attorney.

It is not singular, therefore, that in these cases of *decrees* in favor of *foreigners* Congress waived a rule that was seen to have no substantial application.

S. F. PHILLIPS,
*Solicitor-General.*

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